

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

% **Date of decision: 20th September, 2018.**

+ **EX.F.A. 20/2018 & CM No.22071/2018 (for stay)**

SANJEEV

..... Appellant

Through: Mr. Ajay Malhotra and Mr.
Deepankar Kataria, Advs.

Versus

MADHUBALA & ORS

..... Respondents

Through: Mr. Sunil Choudhary, Adv. for R-1.

AND

+ **EX.F.A. 22/2018 & CM No.22201/2018 (for stay)**

SANJEEV

..... Appellant

Through: Mr. Ajay Malhotra and Mr.
Deepankar Kataria, Advs.

Versus

HARVINDER SINGH CHEEMA & ORS

..... Respondents

Through: Mr. Sunil Choudhary, Adv. for R-1.

AND

+ **EX.F.A. 24/2018 & CM No.24160/2018 (for stay)**

ISHWAR SINGH & ANR

..... Appellants

Through: Mr. S. Chaturvedi, Adv.

Versus

MADHUBALA & ANR

..... Respondents

Through: Mr. Sunil Choudhary, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. These Execution First Appeals under Order XXI Rule 103 of the Code of Civil Procedure, 1908 (CPC) impugn the common order [dated 26th February, 2018 in Ex. No.50847/2016 & Ex. No.50849/2016 of the Court of Additional District Judge-01 (North)] of dismissal of objections filed by the appellant/s in each of these three appeals to the execution sought by the

respondents/plaintiffs/decreed holder (DHs) Madhubala and Dalip Singh Cheema, of the judgments and decrees [dated 16th December, 2005 in Suits No.196/2002 and 197/2002 of the Court of Additional District Judge, Delhi] and RFAs No.102/2006, 103/2006 & 104/2006 preferred whereagainst were dismissed by the Division Bench of this Court vide judgment dated 26th May, 2008 and Review Petition No.269/2008 in RFA No.102/2006 and Review Petition No.270/2018 in RFA No.104/2006 preferred whereagainst were dismissed on 7th November, 2008 and SLP(C) No.3682-3684/2009 preferred whereagainst was dismissed on 18th January, 2010.

2. These appeals came up first before this Court on 25th May, 2018, when the counsel for the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema appeared on caveat. The appeals have thereafter been adjourned from time to time. Vide order dated 3rd July, 2018, though *prima facie* no merit was found in the appeals, but being First Appeals and the Trial Court files having not been requisitioned till then, requisitioning the Trial Court files, the hearing was adjourned to today.

3. The counsel for the appellant in Ex.F.As. No.20/2018 & 22/2018 and the counsel for the appellant in Ex.F.A. No.24/2018 have been heard. The counsel for the respondent No.1/plaintiff/DH Madhubala has also been heard.

4. The decrees under execution, in favour of the respondents/ plaintiffs/ DHs Madhubala and Dalip Singh Cheema and against Gurdeep Kaur, Bua Singh and Deepak Kakkar (in Suit No.197/2002) and against Gurdeep

Kaur, Surender Kumar, Dinesh Kumar, Sanjay Kumar and Bhagirath (in Suit No.196/2002) were for recovery of possession of immoveable property, being plots of land shown in site plan, proved in the suit and which plots were described in the plaint and the judgment as plots no.10 and 11 situated in Khasra No.93/9/1 in the revenue estate of village Rithala on the basis of title acquired vide registered sale deed in favour of the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema.

5. The objections in execution were filed by the appellants/objectors stating, that they were in possession of plots of land in Khasra No.93/3 and had an independent title to the plots in their possession.

6. The Executing Court, vide the impugned orders, dismissed the objections *inter alia* reasoning that the defendants/judgment debtors (JDs) in the suit had also contested the suit claiming that the property was situated in Khasra No.93/3 and not in Khasra No.93/9/1, as claimed by respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema and it was decided in the suit and upheld till the Supreme Court that the plots in possession of the defendants/JDs and for recovery of possession of which the suit was filed were situated in Khasra No.93/9/1, as claimed by the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema and not in Khasra No.93/3, as claimed by the defendants/JDs. The Executing Court, in the impugned order, thus held that the appellants/objectors could not seek demarcation for determining as to in which of the two Khasra Numbers aforesaid, the plots of land for recovery of possession of which decree had been passed, were situated, as the said aspect had attained finality till the Supreme Court.

7. The counsel for the appellant in Ex.F.As. No.20/2018 & 22/2018, on enquiry, as to what is the document of title in favour of the said appellant, claims that the appellant has Agreement to Sell, Power of Attorney, Will etc. in his favour.

8. The aforesaid documents as per the dicta of the Supreme Court in *Suraj Lamp Vs. State of Haryana* (2012) 1 SCC 656 & (2009) 7 SCC 363 do not constitute documents of title.

9. On further enquiry, as to what is the date of the Agreement to Sell, Power of Attorney, Will etc. in favour of the appellants/objectors, it is informed that the said documents are dated 28th April, 2012.

10. On yet further enquiry, as to when the suits, of decree wherein execution was being sought and in which the appellants/objectors filed objections, were instituted, it is informed that the said suits were instituted in 2002 i.e. prior to the date when the appellants/objectors claimed to have acquired title vide Agreement to Sell, Power of Attorney, Will etc.

11. It has next been enquired from the counsel for the appellants/objectors, that the appellants/objectors having come into possession of the property admittedly during the pendency of the suits, whether not will be bound by the decree.

12. It is stated that the predecessor-in-title of the appellants/objectors were in possession of the property since 1984.

13. On further questioning, it transpires that the sale deed in favour of the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema is of 23rd January, 1984 and was executed by one Vijay Singh and the appellants/objectors also are claiming Agreement to Sell, Power of

Attorney, Will etc., through several hands, but ultimately through the same Vijay Singh only.

14. A reading of the judgment and decree, of which execution is being sought and which has been upheld till the Supreme Court, shows that Vijay Singh was examined as a witness in the suit, by the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema and deposed that he had not executed Power of Attorney claimed by the defendants/JDs from said Vijay Singh in their favour but had executed the sale deed in favour of the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema.

15. In the aforesaid scenario, it is not understood as to how the objections of the appellants/objectors to the execution disclose any ground on which the appellants/ objectors could have objected to the execution or claimed any independent title.

16. On asking, from which date do the documents filed by appellants/objectors show the possession of the appellants / objectors, the answer is that the documents are with effect from the year 2012 only, when the appellants/objectors claim Agreement to Sell, Power of Attorney, Will etc. in their favour and which was after the suit had already been decided in favour of the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema and the First Appeals of the defendants/JDs in the suit were pending consideration before this Court.

17. Such a transfer of property, during the pendency of the suit/appeal, vide Section 52 of the Transfer of Property Act, 1881, is subject to lis pendens and the transferee remains bound by the decree. Reference in this regard can be made to *Satish Chand Vs. Raj Kumar* 2018 SCC OnLine Del 11461.

18. The counsel has then drawn attention to award no.16/85-86 dated 10th September, 1985 under the Land Acquisition Act, 1894 and therefrom has contended that land in Khasra No.93/9/1, of which sale deed was executed by Vijay Singh in favour of the respondents/plaintiffs/DHs Madhubala and Dalip Singh Cheema, stood acquired prior to the execution of the sale deed and the recitals in the sale deeds, of 'no objection certificate' under the Delhi Land (Restrictions on Transfer) Act, 1972 having been obtained, are false, because 'no objection certificate' could not have been issued with respect to acquired land.

19. On enquiry, whether Khasra No.93/3, in which the defendants/JDs and the appellants/objectors claim the subject plots to be, was also acquired, though the counsel for the appellants/objectors sought to dodge a reply but a perusal of the very same award under the Land Acquisition Act shows that vide the same award, Khasra No.93/3 was also acquired.

20. Once it is so, the argument of the counsel for the appellants/objectors, that the respondents/plaintiffs/DHs Madhubala and Dilip Singh Cheema are seeking to execute the decree with respect to land which has been acquired, against different land in possession of the appellants/objectors, also disappears, inasmuch as the Khasra Number in which the appellants/objectors claim the plots to be also stands acquired. It appears, that possession of the land, pursuant to award, has not been taken.

21. The last argument of the counsel for the appellant in EX.F.As. No.20/2018 & 22/2018 is that the dimensions of the plots, as per the sale deeds in favour of the respondents/plaintiffs/DHs Madhubala and Dilip

Singh Cheema and as now existing, are different. It is also contended that there are differences on the site from the site plan proved in the suit and on the basis of which execution is sought.

22. The Executing Court, in the impugned judgment, has in this context rightly held that on comparison, the location of the plots, is the same. I may also add that the plots with respect to which suit was filed and decree has been passed, appear to be part of an unauthorised colony over acquired land; such differences, over a long period from 1984 to today, are bound to exist. However, such minor differences cannot be permitted to be an impediment in the execution of the decree.

23. The counsel for the appellants in Ex.F.A. No.24/2018 adopts the arguments of the counsel for the appellants in Ex.F.A. Nos.20/2018 and 22/2018 and on enquiry states that the appellants in Ex.F.A. No.24/2018 also are in possession since 2012 and claim Power of Attorney ultimately through Vijay Singh supra. He has in addition argued that i) there is a need to determine, in which Khasra number the land in possession of the appellants / objectors is situated; ii) there is a need to determine whether the respondents / plaintiffs / decree-holders Madhu Bala and Dalip Singh Cheema, in execution of the decree are taking possession of land in Khasra No.93/9/1; iii) during the pendency of the suit also, no demarcation was undertaken and the suit was decided merely on the basis of Vijay Singh aforesaid having denied the documents under which the defendants / judgment-debtors claimed and having admitted the sale deed under which the respondents / plaintiffs / decree-holders Madhu Bala and Dilip Singh Cheema claimed; iv) the Division Bench of this Court also, in appeal

against the judgment and decree, relied on the testimony of Vijay Singh; and, v) that it is essential that demarcation be got done in execution and the appellants are willing to make a statement that they will be bound by the demarcation report and will not file any objections with respect thereto.

24. The counsel for the respondents / plaintiffs / decree-holders Madhu Bala and Dalip Singh Cheema has handed over in the Court a copy of the order dated 26th May, 2008 in CM No.5380/2008 under Order XLI Rule 27 of the CPC filed in RFA No.102-03/2008 supra arising from the judgment and decree under execution, of dismissal of the application for a direction to the revenue authorities to carry out demarcation and for comparison by Central Forensic Science Laboratory (CFSL) of the admitted signature of Vijay Singh with signatures purportedly of Vijay Singh on the Power of Attorney under which the defendants / judgment-debtors claimed, reasoning that the defendants / judgment-debtors were seeking to reagitate the issue already decided by the Suit Court and which was not permissible. The counsel for the respondents / plaintiffs / decree-holders also argues that the execution applications are pending since the year 2008, in spite of the judgment and decree of which execution is sought having attained finality with dismissal of the Special Leave Petition on 18th January, 2010 as aforesaid. It is further contended that first, objections filed by one Desh Raj to both the execution applications and after the objections of Desh Raj were dismissed, the appellants / objectors filed objections and which have now been pending for long.

25. I have considered the additional contentions of the counsel for the appellants in Ex.F.A. No.24/2018 and do not find any merit therein. The

reasoning which was given in the judgment and decree of which execution has been sought and which was upheld till the Supreme Court, that the defendants / judgment-debtors claiming through Vijay Singh could not claim title when Vijay Singh himself had denied execution of Agreement to Sell, Power of Attorney etc. under which the defendants / judgment-debtors claimed, applies equally to the appellants / objectors as well, who also, like the defendants / judgment-debtors, are claiming ultimately through Vijay Singh only. Once the objections in executions are the same as the defence to the suit and which has already been adjudicated upon, no principle of law requires the executing court to again put the objections to trial on the same issues which were for adjudication in the suit.

26. As regards demarcation, I may also highlight that the judgment and decree in the suit which is under execution, is for recovery of possession “in respect of property shown red in site plan Ex.PW2/2 in suit No.196/2002 and in respect of property shown red in site plan Ex.PW2/1 in suit No.197/2002” and if the appellants / objectors are in possession of the plots as shown in the site plan, they are liable to be dispossessed therefrom in execution of the judgment and decree, irrespective of the Khasra number in which the land may be situated.

27. The counsel for the appellants in Ex.F.A. Nos.20/2018 and 22/2018 has relied on paras no.11 to 14 of *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust* AIR 1998 SC 1754, paras no.3 and 4 of *Anwarbi Vs. Pramod D.A. Joshi* (2000) 10 SCC 405, para no.15 and 16 of *N.S.S. Narayana Sarma Vs. Goldstone Exports (P) Ltd.* AIR 2002 SC 251 and on *Ashan Devi Vs. Phulwasi Devi* AIR 2004 SC 511 holding that, (i) executing court can

decide whether the objector is a person bound by the decree, (ii) possession of the objector cannot be disturbed without deciding the objections to the execution preferred by the objector; (iii) objections to executions have to be determined in execution and not by a separate suit and the executing court is to decide whether the questions raised by the resistor or obstructer legally arise between the parties; and, (iv) objections of a third party against a decree for specific performance are maintainable under Order XXI Rule 99 of the CPC and a separate suit is not maintainable.

28. The propositions of law on which the judgments are cited are not applicable to the present case. In any case, the objections of the appellants to the execution have been decided by the executing court and now the appeals against the order of dismissal of objections, which under the CPC has the status of a decree, are being considered by this Court.

29. The counsel for the appellants in Ex.F.A. No.24/2018, at this stage draws attention to para no.11 of the judgment and decree under execution where, while discussing the testimony of Vijay Singh, it is recorded that Vijay Singh admitted Power of Attorney in favour of one Ramesh Chand Jain. It is argued that the Power of Attorney and Agreement to Sell, on the basis of which the appellants in Ex.F.A. No.24/2018 claim, are flowing from Vijay Singh through Ramesh Chand Jain.

30. No merit is found in the aforesaid contention also. A complete reading of para no.11 of the judgment shows that all Vijay Singh deposed was that Ramesh Chand Jain with his knowledge used to execute sale deeds in favour of the others acting on the Power of Attorney. The appellants

admittedly have no sale deed in their favour and cannot take advantage of the said testimony of Vijay Singh referred to in para no.11 of the judgment.

31. The counsel for the appellants / objectors in Ex.F.A. Nos.20/2018 and 22/2018 states that the position is the same qua the said appellants also.

32. There is no merit in the appeals, the same are dismissed.

No costs.

SEPTEMBER 20, 2018

Bs/gsr ..

RAJIV SAHAI ENDLAW, J.

Page 11 of 11