

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th December, 2018

+ **RFA(OS) 68/2016 & CM APPLs. 33615/2016, 44585/2016, 45207/2016, 2026/2018, 13196/2018, 34416-34417/2018**

AMAR NATH CHOWDHARY

..... Petitioner

Through: Mr. J.P. Sengh, Sr. Adv. with Mr. M.K. Giri, Mr. Zubin Singh, Mr. Mringna Shekhar, Mr. Shashi Pratap Singh & Mr. Akash Mishra, Advs.

versus

DEWAN IZZAT RAI NANDA (DECEASED)

THR. LEGAL HEIRS & ORS

... Respondents

Through: Mr. Arvind Kr. Gupta, Mr. Gajanand Kirodiwal, Mr. Prashant Bhardwaj & Mr. Anuraj, Advs. for R-1 (i) to (iii)
Mr. J.N. Aggarwal, Adv. for R-2, LR (i) & (ii).
Mr. Rajeev Sharma, Adv. along with Mr. Balraj Dewan for Legal heir's of R-3.
Mr. D. Moitra, Adv. for R-5 to 7.
Mr. Akshay Makhija & Ms. Mahima Bahl, Advs. LRs for R-17(b).

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J.

%

1. This appeal is directed against an order dated 16.08.2016, passed by a learned Single Judge, wherein a final decree has been passed in a partition suit to which the respondents herein are party. The appellant is the purchaser of one of the properties in the suit.

2. The suit was filed for partition of a joint family property including a piece of land admeasuring 108 kanals 9 marlas at R.S.Pura, District Jammu in the State of Jammu & Kashmir [hereinafter referred to as 'the subject property']. A preliminary decree was ordered in the suit on 17.07.1998 and a direction for sale of all the suit properties and disbursement of the proceeds amongst the parties to the suit in their respective shares was passed on 16.10.1999. The senior most member of the family [fifth respondent] was also appointed as the receiver to conduct the sale of the property.

3. The appellant entered the picture on 13.02.2014, when he made an offer of ₹14 crores in court for purchase of the subject property. He subsequently increased the bid to ₹18 crores which was accepted by an order of the court, dated 14.03.2014, and 25% thereof was deposited by him. He deposited the remainder of the consideration in installments, as directed. Consequently, the sale in his favour was confirmed by an order dated 10.11.2014 and the receiver was directed to execute the sale deed in his favour, preferably by 16.12.2014.

4. The court was thereafter called upon to pass several further orders, in an attempt to complete the formalities for execution of the sale deed in favour of the appellant. Several letters written by the receiver and the appellant to the authorities in the State of Jammu & Kashmir are also on record, as are orders passed by the said authorities. Significant amongst the orders passed by the Court are the following:

(a) By an order dated 28.04.2015, the receiver was directed to go to Jammu on 05.05.2015 and appear before the concerned Commissioner for the purpose of completing the sale.

(b) In a subsequent order dated 18.05.2015, it was recorded as follows:

“Learned counsel appearing for the plaintiff also submits that preliminary decree was passed on 17.7.1998. On 16.10.1999 a direction was passed whereby it was directed that the parties are permitted to sell the property and the proceeds were to be disbursed in the proportion as in the preliminary decree and Ms. Kanta Dewan defendant No.4 was appointed as a Receiver to conduct the sale of the properties.

In my opinion, as a direction for sale of the property has already been passed the suit is liable to be finally disposed of by way of a final decree directing sale of the property. Direction regarding sale, if any, are required to be passed by the Executing Court and not in the present suit. It transpires that one property at R.S. Pura, Jammu, has been sold on 14.3.2014 pursuant to orders of the Court whereby a sum of Rs. 18 crores has been deposited by the proposed Auction Purchaser which is lying deposited in Court. Disbursement of the said amount is pending as the sale deed is yet to be registered in favour of the auction purchaser.

Learned counsel appearing for the parties request that passing of a final decree be deferred till the proceeds of the above amount are disbursed to the parties.

Learned counsel appearing for the Auction Purchaser submits that pursuant to directions of this Court the Receiver has appeared before the concerned authorities in Jammu and has completed her share of the formalities at this stage. He submits that balance permissions are likely to be received in four weeks time for which the Auction Purchaser is doing necessary follow up.

In the interest of justice, I defer passing a final decree. The Auction Purchaser may expeditiously pursue necessary permissions. The concerned revenue authorities are directed to specifically give necessary permission as per law. Needless to add that Receiver will also co-operate authorities she may fulfil the same. Needful be done expeditiously.”

(c) On 16.07.2015, the appellant herein submitted that a certified copy of the *fard* (evidently a permission for sale) is required for execution of the sale deed and the receiver submitted that she would obtain the certified copy thereof and supply it to the appellant.

(d) By orders dated 23.11.2015, 05.04.2016 and 29.04.2016, directions were issued to the authorities in Jammu, and the appellant and the receiver were required to present themselves before the concerned authorities on appointed dates in order to obtain the required *fard*.

(e) By the order dated 29.04.2016, it was also directed that the interest earned on the amount deposited by the appellant would be released to him subject to the result of the pending proceedings.

5. Despite deposit of the entire sale consideration by the appellant, the formalities for execution of the sale deed could not be completed by the parties in the time frame contemplated by the Court. The appellant and the respondents were all put to detriment as a result: the appellant was deprived of the use of the property for which he had paid in full, and the respondents were unable to access the sale consideration to which they were entitled. Both approached the Court for various directions and the impugned order dated 16.08.2016 came to be passed. It was recorded therein that the parties were unable to approach the Commissioner / Secretary (Revenue), Government of Jammu & Kashmir due to the prevailing situation in the State. However, instead of directing the receiver to participate further in the execution of the sale deed, owing to her advanced age, the learned Single Judge considered it necessary to vest all required powers for executing the conveyance in the appellant himself. It was observed that although the appellant is also of advanced age, he had

purchased the subject property only two years prior to the order, and was also a native of the state of Jammu & Kashmir.

6. The learned Single Judge noted that there did not appear to be any rival claims to the subject property. The contention of the appellant that the sale consideration deposited by him ought not to be disbursed to the parties until execution of the sale deed, with the necessary permission of the State authorities, was rejected. The learned Single Judge, therefore, passed the final decree in the suit and also gave the following directions with regard to the subject property:

“ 15. In this view of the matter, a final decree for partition is passed in the suit directing the partition by sale of all the properties subject matter of the suit and distribution of the sale proceeds amongst the parties in accordance with their share under the preliminary decree and with the following further directions:

(I) The original title document/s with respect to the property/land which have been auctioned to Lata Amar Nath Choudhary lying deposited in this Court be released in favour of the auction purchaser Lala Amar Nath Choudhary himself (it is clarified that option has been given to the counsel for auction purchaser for the documents to be handed over to him but he has refused and stated that he would like the auction purchaser to personally come and collect the papers from the Court;

(II) List the matter for the said purpose before the Joint Registrar on 26th August, 2016 at 1600 hours;

(III) The auction purchaser Lala Amar Nath Choudhary is empowered by this Court to do all acts/deeds before the Courts/ Authorities at Jammu & Kashmir to have the land admeasuring 108 kanals and 9 marlas situated at Tehsil R.S. Pura, District Jammu transferred in his own name;

(IV) The amount of Rs. 18 crores deposited by the auction purchaser in this Court together with interest accrued thereon be disbursed by the Registry in favour of the parties to the suit in accordance with their share as per the preliminary decree;

(V) The parties to the suit, on the next date of hearing as aforesaid, before the Joint Registrar to give a joint statement of the share of each of the parties in the said amount of Rs. 18 crores along with the name/s in which the cheque/s is/are to be drawn by the Registry;

(VI) The Joint Registrar to, in the order of that date, clarify the said position and instruct the Registry accordingly.

(VII) Liberty is also given to the auction purchaser to, in the case of any difficulty encountered or if any further power being required, approach this Court therefore and if any defect is found in the title of the parties to the suit, to intervene in the execution of this suit vis-à-vis the other properties of the parties, for recovery of the price paid by him and for such other relief for which he may be entitled to.

16. At this stage, the counsel for the auction purchaser states that the auction purchaser be empowered to transfer the property/land in favour of any other person.

17. None of the parties have any objections thereto.

18. Accordingly, it is further clarified that the auction purchaser Lala Amar Nath Choudhary shall be entitled, to either on the basis of the empowerment herein contained in his favour, either have the property/land transferred/mutated in his name or in the name of any other person. It is yet further clarified that the auction purchaser under the said powers would also be entitled to have the sale deed executed before the authorities at Jammu.”

7. Mr. J.P. Sengh, learned counsel submitted that the impugned order causes severe prejudice to the appellant, inasmuch as the sale consideration deposited by him would be disbursed to the suit parties without ensuring that he gets the benefit of the property which he has purchased. Appearing for the respondents, Mr. D. Moitra, learned counsel submitted that the learned Single Judge had arrived at a reasonable and just resolution of the situation which had deprived the respondents herein of the use of their money.

8. In our view, the interests of the appellant have been sufficiently protected in the impugned order. Having deposited the entire sale consideration in this Court, the appellant was certainly entitled to the execution of the sale deed in his favour. By virtue of directions contained in the impugned order, the appellant has been authorized and sufficiently empowered to ensure that this is done. It has been recorded in the earlier order dated 18.05.2018 passed in the suit that the receiver has already completed all the formalities required of her. To the extent that he requires any further power or encounters any difficulty, the appellant has also been granted the liberty to approach this Court again. Further, the learned Single Judge has also reserved the appellant's right to intervene in the execution proceedings arising out of the final decree, in order to recover the price paid by him and seek any other relief, in the event the title of the respondents to the subject property is found defective.

9. The appellant has not raised any grievance regarding the title of the respondents to the subject property, and his apprehension in respect of the impugned order appears to be based on the possibility that the property may not be finally registered in his name due to objections that may be taken by the authorities of the State. In our view, such an apprehension cannot

defeat or reverse the confirmed sale at this late stage. The appellant had consciously made an offer for purchase of the subject property in the course of the suit proceedings. He had first made an offer of ₹14 crores and subsequently [one month later] raised it to ₹18 crores. He deposited the sale consideration in installments over a period of six months. If he took all these steps without due inquiry as to the title to the land and the steps required to complete his acquisition thereof, such conduct was at his own peril.

10. It is evident from the orders narrated above that this Court has attempted to ensure due execution of the sale deed through the cooperation of the parties and has also given directions in this regard to the authorities of the State from time to time. The impugned order of the learned Single Judge, in our view, balances the interests of all the parties by authorizing the appellant himself to perfect his title, by ensuring execution of the sale deed in his favour or in the name of any other person, while at the same time releasing the sale consideration to the parties entitled to it. This is a just and equitable resolution of the impasse and does not warrant interference by this Court.

11. Our conclusion is supported by a recent judgment of the Full Bench of this Court in *Indu Singh & Anr. v. Prem Chaudhary & Ors.* 2018 SCC On Line Del 8951 to which one of us (S. Ravindra Bhat, J.) was party. *Indu Singh* ruled that an order for sale of a property in a partition suit is in the nature of a final decree and capable of execution as such. Seen in this light, the directions of the learned Single Judge in the impugned order are in aid of concluding the sale in favour of the appellant, in accordance with the orders of the Court accepting his offer and confirming the sale.

12. For the foregoing reasons, we see no reason to interfere with the impugned order dated 16.08.2016 passed by the learned Single Judge. The appeal is accordingly dismissed and the interim order of stay dated 16.09.2016, is vacated. All pending applications also stand disposed of.

PRATEEK JALAN, J.

S. RAVINDRA BHAT, J.

DECEMBER 13, 2018

'hkaur'

