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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th November, 2020
+ **C.R.P. 284/2019, CM APPLs. 52580/2019 & 3468/2020**
SANTOSH KUMARI KUBA Petitioner
Through: Mr. Sudipto Sircar, Advocate (M-9871908992)
versus

JAGDISH CHAND DHIR & ORS. Respondents
Through: Mr. Jatan Singh & Mr. Rizwan,
Advocates for R-2 (M-9643349576)
Mr. Anuj Tyagi, Advocate for R-3 (M-9871281055)

CORAM:
JUSTICE PRATHIBA M. SINGH
Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Ld. Counsel for Respondent no.2 had sought an adjournment.
2. The brief background of this case is that the Petitioner in the present petition had entered into an Agreement to Sell dated 20th June, 1980 in respect of the suit property being House No. 1761, CR Park, Kalkaji, New Delhi-110019. A suit for specific performance being Civil Suit No. 205/2002 was filed by the Petitioner/Plaintiff in suit in 1981, in which vide order dated 29th April, 1981 an *ex-parte* interim order was granted, restraining the Defendant/Respondent No.1 herein from alienating, creating any third party interest or parting in possession with the suit property. On 14th April, 1981, the Defendant filed the written statement, however, remained *ex-parte* after that. The decree was passed on 10th December, 2002, granting specific performance in favour of the Plaintiff.

3. Thereafter, an application under Order IX Rule 13 read with Section 151 of CPC was moved by the Defendant, which was allowed, vide order dated 9th April, 2012, subject to payment of costs. Since costs were not paid, the original decree was restored.
4. The Plaintiff/decreed holder then sought execution of the decree by filing *Execution Petition No. 96143/2016*, in which two third parties – Mr. Surender Singh and Swastic Real Home Pvt. Ltd. i.e. Respondents No.2 and 3 (*hereinafter, 'Objectors'*) filed Objections under Section 47 read with Section 151 of CPC. Mr. Surender Singh claimed to be the original purchaser of the suit property from the Defendant, by relying on the documents dated 4th November, 1980. The Plaintiff filed its affidavit in reply to the Objections, after which the impugned order dated 25th November, 2019 has been passed. Vide the said order, the Executing Court has framed issues and has put up the matter for cross examination.
5. The parties have been heard at length in this matter on 10th September, 2020. Mediation was also attempted however, there was no amicable resolution. The interests of the two Objectors are not at variance with each other. Respondent no.1/Defendant is the seller of the suit property in favour of both the Petitioner as also the Objectors, who has not appeared in the Trial Court or before this Court.
6. Upon hearing the ld. counsels for the parties, it appears that the execution proceedings can be expedited by taking on record the documents, relied upon by the Objectors in support of the objections i.e. the Sale Agreement dated 4th November, 1980, Receipt dated 4th November, 1980 and the General Power of Attorney (*hereinafter, 'GPA'*) dated 4th November, 1980 (*collectively referred to as Objectors' documents*). It is the admitted

position that only the GPA is registered and none of the other documents are registered. The GPA was presented on 5th November, 1980 and registered on 6th November, 1980.

7. On the strength of these documents, both parties are agreeable that they would address arguments on the objections filed by the Objectors/Respondents No. 2 & 3, without the need for cross examination of witnesses.

8. Further, after perusing the issues framed by the Executing Court, the parties are agreeable that the issues be amended in the following manner:

- i) Whether the Objectors have any right, title and/or interest in the suit property, in view of the Objectors' documents?
OP - Objectors No.1 and 2
- ii) Whether the present decree cannot be executed against the Objectors? OP – Objectors No.1 and 2
- iii) Whether the execution petition is bared by limitation? OP – Objectors No.1 and 2
- iv) Whether the purchase of suit property by Objector No.1 is hit by the doctrine of *lis pendens*? OP-Decree Holder

9. In view of the fact that parties agree that no oral evidence is required on the above four issues, both parties may file their affidavits in evidence within four weeks. No further documents, except relevant Court records would be annexed with the affidavits in evidence. After filing of the affidavits in evidence, the Executing Court would decide the above issues and the objections shall be disposed of within a period of four months from today.

10. The previous affidavit of Objector No.1 shall stand withdrawn, in view of today's order.

11. The above order has been passed with the consent of Petitioner and Respondent No.2/Objector No.1. The petition is disposed of, in the above terms. All pending applications are also disposed of.

12. Copy of this order be sent to Civil Judge-10 [Central], Tis Hazari, Delhi.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 19, 2020

Rahul/A

