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

Reserved On: 5th March, 2020

Date of Decision: 27th April, 2020

+ **CM (M) 49/2018 & CM APP. 1317/2018**

+ **CM (M) 50/2018 & CM APP. 1341/2018**

+ **CM (M) 67/2018 & CM APP. 1713/2018**

HARI SINGH (DECEASED) THR LRS Petitioner

Through: Sh. K. Sunil & Ms. Chinky Ojha,
Advocates. (M:8588060464)

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Sh. Yeeshu Jain & Ms. Jyoti Tyagi,
Advocates for R-1. (M:9953031339)
Sh. Arjun Pant, Advocate DDA.
(M:9811071260)
Sh. B.S. Kharb, Advocate for R-3 &
4. (M:9810694545)

Sh. Namit Suri, Advocate –
Amicus Curiae (M:9582410211)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. The present petitions raise an important question of law as to whether an Executing Court giving effect to an award passed by the Land Acquisition Collector can go into the genuineness and validity of the Will set up by one of the heirs of the deceased, in whose favour compensation already stands confirmed.

2. The facts in these cases show that land in village Bharthal was acquired by the Government on 13th December, 2000. A decree dated 7th August, 2008 was passed in LAC No.266-A/06, holding Sh. Hari Singh and

his three sons who were the Petitioners, as being entitled to the compensation. The operative portion of the said judgment/decreed reads as under:

“55. On the basis of my findings on Issue nos. 1 and 2, the Petitioners are entitled to compensation @ Rs. 15,00,000/- per acre in block "A" and Rs. 13,36,000/- per acre in block "B". Besides this the Petitioners are also entitled to 30 per cent solatium on the market value of the land fixed in this case.

56. The petitioners shall also be entitled to interest on the enhanced amount/compensation awarded by this court u/s 28 of LA Act @ 9 per cent per annum from the date of award or dispossession whichever is earlier till the expiry of one year and thereafter @ 15 per cent per annum till payment.

57. The petitioners shall further be entitled to additional amount of 12 per cent per annum on the market value fixed in this case u/s 23 (1A) of the Act from the date of notification under section 4 of the Act till the date of dispossession or award whichever is earlier.

58. The petitioners are further entitled to interest on solatium and additional amount as per directions given by Supreme Court in the case of Sunder Versus UOI DLT 2001 (SC) 569 wherein it is held that person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium.

59. The amount of compensation already paid to the petitioners be adjusted and deducted from total amount of compensation. No orders as to costs. The petition stands answered accordingly. Decree sheet be drawn accordingly.

60. A copy of the judgment be sent to Land

Acquisition Collector (South West) for information and necessary action. File be consigned to record room. and additional amount as per directions given by Supreme Court in the case of Sunder Versus UOI DLT 2001 (SC) 569 wherein it is held that person entitled to compensation awarded is also entitled to get interest on the aggregate amount including solatium.”

3. The deceased – Sh. Hari Singh and his three sons i.e., Sh. Kanwal Singh, Sh. Ram Kumar & Sh. Surat Singh, therefore became joint Decree Holders – entitled to 1/4th share each. Out of the three sons, one son i.e. Sh. Surat Singh pre-deceased Sh. Hari Singh. Insofar as the shares of the three sons are concerned, the compensation has already been disbursed to them and/or their LRs. Sh. Hari Singh passed away on 22.4.2011. The question that has arisen here is as to how the compensation in the name of Sh. Hari Singh i.e., 1/4th share is to be disbursed, and who is entitled to the same.
4. There are two sets of claimants. One set of claimants consists of two sons Sh. Kanwal Singh and Sh. Ram Kumar. The second set of claimants consists of the Petitioners herein - three grandsons of Sh. Hari Singh, namely, Sh. Hari Kishan, Sh. Charan Singh and Sh. Karamvir Singh, who are the sons of late Sh. Surat Singh. The said grandsons of late Sh. Hari Singh claim his share in the compensation amount exclusively on the basis of an alleged registered Will dated 27th February, 2003. Thus the dispute is between two sons of Hari Singh on the one hand and three grandsons of Hari Singh on the other hand.
5. At the stage when the legal heirs were substituted, a Id. Single Judge of this Court had the occasion to consider the disputes and had passed an order holding that in view of the competing claims between the parties, the

parties were relegated to their respective legal remedies in order to establish as to who would be succeeding to the share of Sh. Hari Singh. The observations in order dated 20th August, 2015 passed in LA.APP. 1129/2008 read as under:

“C.M. No. 595/2014

1. This application dated 02.01.2014 has been preferred by the applicants to bring on record the legal representatives of late Sh. Hari Singh by invoking Order XXII Rule 3 CPC.

2. The present Land Acquisition Appeal had been preferred by the three appellants, namely Sh. Hari Singh, Sh. Surat Singh & Sh. Kanwal Singh. The appeal was preferred to seek enhancement of the compensation awarded by the Court vide judgment dated 07.08.2008 in L.A.C. No.266-A/2006. It appears that Sh. Hari Singh passed away on 22.04.2011. However, the application to bring on record his legal representatives was not moved, and in the meantime, this Court disposed of the appeal itself on 06.01.2012. Thereafter, the execution proceedings have been filed in respect of judgment dated 06.01.2012.

3. Now, this application has been preferred by the applicants to seek substitution of the deceased Sh. Hari Singh by three of his grandsons, namely Sh. Hari Kishan, Sh. Charan Singh & Sh. Karamvir, who are sons of late Sh. Surat Singh and grandsons of late Sh. Hari Singh. They premised their right to succeed to the estate of late Sh. Hari Singh on the basis of a Registered Will dated 27.02.2003.

4. The purpose of bringing on record the legal representatives of the deceased appellant in the present appeal was only to enable the legal representatives to pursue the present appeal. Even if the legal representatives of the deceased co-appellant are not brought on record, and the right to sue

survives to the surviving appellant(s), they would be entitled to pursue the appeal, and the appeal would not abate in this situation.

5. That is what has happened in the present case as the appeal was heard and disposed of by this Court on 06.01.2012. Merely because the legal representatives of the deceased Sh. Hari Singh were not brought on record, in execution, it would not mean that the rights of the legal heirs of late Sh. Hari Singh to realise the compensation, which would fall to the share of late Sh. Hari Singh would be defeated, or not recognised. Apparently, there is a dispute with regard to the execution and validity of the Will, which has been raised by the two sons of late Sh. Hari Singh, namely Sh. Kanwal Singh & Sh. Ram Kumar.

6. In my view, the scope of the present appeal was only to consider the aspect of determination of compensation to be awarded to the claimants/interested persons. The scope of the present appeal could not be the determination of the inter-se disputes and lingering between the parties, who are claiming to be heirs of one of the deceased appellant. Moreover, the appeal, as aforesaid, already stands disposed of on 06.01.2012.

7. In these circumstances, I am not inclined to allow this application. However, it shall be open to the applicants to prefer such other remedy as may be available to the applicants in law to stake their claim on the basis of the Registered Will, as aforesaid, and it shall be open to the other heirs of late Sh. Hari Singh to contest the claim made by the applicants. The Executing Court shall, till the said dispute regarding succession and apportionment qua the estate of late Sh. Hari Singh is decided one way or another, ensure protection of interest of such persons concerned.

8. The application stands disposed of in the aforesaid terms.”

6. In the meantime, the execution proceedings in respect of the share of Sh. Hari Singh was continuing. In the said execution, order dated 5th July, 2016 was passed to the following effect:

*“Applicant Hari Kishan is present in person.
Sh. Kharab has filed reply to the application of Hari Kishan. Copy given.
In view of the rival contentions of the two sets of applicants, following issues are framed:-
(1) Whether the deceased DH Hari Singh has left behind registered will dated 27.2.2003 as alleged by the applicant Hari Kishan.
The case is now adjourned for evidence of applicant Hari Kishan on the said issue. He shall file evidence by way of affidavit of his witnesses within two weeks from today with advance copy to the counsel for the other applicants.
The witnesses shall remain present on the next date for their cross examination.
Put up on 26.08.2016.”*

Thus, the executing court framed an issue on the question of the Will and listed the matter for recording of evidence on the said issue.

7. At the time when evidence was being recorded in respect of the Will, an objection was taken that the Will can only be proved in probate proceedings, and not in execution proceedings. This was recorded on 21st December, 2016 by the following order:

*“Applicant Hari Kishan is present in person.
The case is today listed for cross examination of applicant Hari Kishan and Mahender Singh. Both of them are present for their cross examination.
However, ld. counsel Sh. Kharab submits that the Will allegedly left behind by deceased Hari Singh cannot be permitted to be proved in this execution*

proceedings and same can be proved only in probate proceedings or some other appropriate proceedings before the Civil Court.

I do not feel prima facie in agreement with the submissions of the ld. counsel. He, therefore, seeks time to satisfy this court on this aspect.

Put up for arguments on the legal objection raised by Sh. Kharab, Advocate, as mentioned herein above, on 25.02.2019.”

8. Thereafter, the impugned order has been passed dated 24th October, 2017 adjourning the matter *sine die* and relegating the grandsons of Sh. Hari Singh to avail of the appropriate legal remedy in order to get the Will probated:

“4. After pleadings of the both sets of legal representatives, learned predecessor of this court had framed a legal issue and evidence was called for. However, during the course of evidence, the legal issue arises as to whether the will in question can be proved in the execution proceedings before the civil court, the matter was fixed for arguments.

5. I have heard learned counsels for the parties appearing in the instant application as well as in the two aforementioned execution petitions and have perused the entire record.

6. Learned counsel for the applicant has argued that will in question can not be exhibited during the execution proceedings and that the same is not even got probated. He argued that the applicants only are entitled to receive the compensation awarded in respect of the original decree holder.

7. On the other hand, learned counsel for non applicants has argued that it is not necessary to get the Will probated in Delhi City and that only non applicants are

entitled to receive the compensation amount qua original decree holder.

8. It appears to be a family dispute of claimants as to who is entitled to receive the compensation amount received from the LAC in favour of the original decree holder. All the parties to the litigation are related to each other. The Will in question is duly registered though the same is not in favour of all the claimants herein but in favour of one set of the claimants/L.Rs. Prima facie, it appears that the Will in question was initially preferred for probation, however, the same could not be probated as the probate case filed earlier was admittedly withdrawn for the reasons best known to the parties. This is a dispute amongst the legal representatives of the original decree holder Hari Singh and one of the set of the LRs intended to prove the Will in question while the other set of LRs has objected the Will to be exhibited during the execution proceedings. Further, this is the legal proposition of law that natural heirs are required to be substituted. Hence, in the opinion of this court, proceeding further in the instant matter would be a futile exercise until the Will in question is not probated or in alternate the dispute is settled between the claimants amicably. Here is not the case where none is opposing the Will. Applicants herein are opposing the Will in question. Hence, the present application, at this stage, can not be allowed. The same stands disposed off accordingly.

9. Resultantly, further proceedings of the other two execution petitions filed before this court can not be allowed. Hence, the proceedings of the two execution petitions bearing nos.15532/16 and 15533/16 titled Hari Singh (deceased) through LRs vs UOI & Ors filed on behalf of one set of the legal heirs of deceased Hari Singh stand adjourned sine die with liberty to the decree holders/claimants to get the same revived at appropriate stage.

9. Thus, in the impugned order, the executing court observed that the Will having not been probated, the execution petition cannot proceed further. Parties have thus been relegated to their remedies to either get the Will probated or to settle their disputes.

Submissions of Ld. Counsels

10. The above order is under challenge in the present petition. Ld. counsel for the Petitioners has relied upon a judgment of this Court in ***Arjan Dass v. Madan Lal, 6 (1970) DLT 260*** to argue that even in rent control proceedings, the validity of a Will can be gone into and since in Delhi, seeking of a probate in respect of a Will is not mandatory, there is no bar for the Reference Court to determine the issue framed about the Will, to determine as to who should be entitled to compensation. On the other hand, ld. counsel appearing for the Respondents has relied upon Order XXI Rule 15 CPC to argue that the said provision only permits natural heirs to be impleaded and if there is a dispute as to the Will, the said dispute would have to be resolved only in probate proceedings and not in execution proceedings by the Reference Court under the Land Acquisition Act.

11. Sh. Kharab, ld. counsel appearing for the private Respondents relies upon the judgment of the Punjab and Haryana High Court in ***Ch. Vidya Bhushan (Dead) through LRs & Ors. v State of Haryana [RFA No. 1900/1980, Decided on 15th November, 2011]*** to argue that the Reference Court has no jurisdiction to decide the issue in respect of title between the contesting parties. He submits that this is also clear from the order dated 20th August, 2015 passed in LA. APP. 1129/2008 where the ld. Single Judge observed that the determination of compensation *inter se* between the parties may not be within the scope of the appeal before this Court. The remand to

the Executing Court and the decision of the Executing Court ought to be in accordance with law and since the Executing Court has no power to adjudicate upon the contest between the parties, the question as to the validity and genuineness of the Will and the rights of the claimants under the Will cannot be gone into by the Executing Court. Ms. Tyagi, Id. counsel submits that the original compensation was already disbursed to Sh. Hari Singh and the dispute at this point is only in respect of the enhanced compensation and to whom the same is to be disbursed.

12. While this matter was being heard on 17th February, 2020, Mr. Namit Suri, Advocate who was present in Court, voluntarily assisted the Court and submitted that a recent judgement of the Supreme Court has dealt with this issue. Accordingly, Mr. Suri, was appointed as an Amicus Curiae to assist the Court. The Id. Amicus Curiae relies upon the judgment of the Supreme Court in *Varadarajan v. Kanakavalli & Ors*, [Civil Appeal No.5673/2009, Decided on 22nd January, 2020] to canvass the proposition that the Executing Court can decide the conflicting claims of the legal representatives even when one of the parties is relying upon a Will which has, allegedly, been executed by the deceased. Id. Amicus Curiae also places reliance on *G.H. Grant Dr v. State of Bihar*, AIR 1966 SC 237 to submit that conflicting rights cannot be decided by the Collector and it is only the Reference Court which can decide title and conflicting claims of parties. Only upon the Reference Court adjudicating the entitlement of the parties can the Collector disburse the compensation deposited.

13. Reliance is further placed on *Arulmighu Lakshminarasimhaswamy Temple Singirigudi v. Union of India And Others*, (1996) 6 SSC 408; *Madan and Another v. State of Maharashtra* 2014 2 SCC 720 and *Sharda*

Devi v. State of Bihar And Another (2003) 3 SCC 128. The proposition laid down in all these judgments is that crystallization of the apportionment has to be made by the Reference Court under Section 30. The Collector, under Section 18, would not have the power to decide the conflicting claims and thus, once the apportionment is made, by the Reference Court under Section 30 or in a civil suit, the Collector can disburse the compensation.

14. *Bai Shakriben v. Special Land Acquisition Officer & Another, (1996) 4 SCC 533* and *Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada, 2005 9 SCC 123* are cited to argue that once the decree becomes final, claims which are contrary to the decree or conflicting with the decree cannot be set up in execution proceedings.

15. It is further argued that it is the settled legal position that the Executing Court, even in land acquisition proceedings, cannot go behind the decree which has already been passed and the only remedy of any person intending to seek higher claims than what is contemplated in the decree would be to seek the setting aside of the decree itself. The following observations of the Supreme Court in *Bai Shakriben (Supra)* and *Jaya Chandra (Supra)* are relied upon:

Bai Shakriben v. Special Land Acquisition Officer & Another

“6. A Constitution Bench of this Court in Union of India v. Raghubir Singh came to consider the effect of subsection (2) of Section 30 of the transitory provision on which strong reliance was placed by Shri Dave. In paragraphs 33 and 34, the Constitution Bench had held that if the proceedings are pending in appeal, the amendment Act has no application and it would be applicable only to the proceedings if they are pending before the Collector or Reference Court between 30-4-

982 to 24-9-1984. It would thus be seen that if the proceedings are pending between these dates, indisputably the appropriate course (sic court) or LAO is required to apply the provisions as amended under Act 68 of 1984. But having allowed the decree to become final, the question emerges whether it would be open to the executing court or the Reference Court to go behind the decree which becomes final to amend the self-same decree by exercising the power under Order 47 rule 1 and Section 151 CPC. We feel that the executing Court cannot go behind the decree. It would have been appropriate for the claimants to have gone in appeal and have the matter corrected, but unfortunately they did claim of the appellate remedy and allowed the decree to become final. The omission to award additional amounts under section 23(1-A), enhanced interest under section 28 and solatium under Section 23(2) are not clerical or arithmetical mistake crept in the award passed by the reference Court but amounts to non-award. Under those circumstances, the Reference Court was clearly in error in entertaining the application for amendment of the decree and is devoid of power and jurisdiction to award the amounts under Sections 23(2), 23(1-A) and 28 of the Act.”

Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada

“12. Furthermore, in this case the aforementioned order dated 8-10-1996 has attained finality by reason whereof the original decree stood amended. The executing court in view of the decision in Bai Shakriben [(1996) 4 SCC 533] itself could not have gone behind the decree. The executing court, thus, proceeded to pass the impugned judgment on a wrong premise. The executing court keeping in view its limited jurisdiction could not have gone into the question as to whether the Reference Court was correct in passing the order dated 8-10-1996 amending the decree or not. The executing court did not

have any jurisdiction to go into the said question. A decree passed by a competent court of law can be suitably amended. A decree, so amended on an application filed by the claimant for review thereof, becomes final. If the State was aggrieved by and dissatisfied therewith, it could have taken the matter by filing an appropriate application before the High Court. But keeping in view the fact that the said order was allowed to attain finality, the court could not have permitted the State to reagitate the said question before the executing court by filing an application under Section 47 of the Code of Civil Procedure or otherwise. In a case of this nature, the principle of estoppel by records shall come into play.”

16. Sh. Arjun Pant, Id. counsel appearing for the DDA, submits that insofar as the DDA is concerned, the land which was acquired was for the benefit of the DDA, and the compensation amount already stands deposited with the LAC. Ms. Jyoti Tyagi, Id. counsel appearing on behalf of the LAC, submits that the compensation amount has been deposited by the LAC in the Reference Court for disbursement as per the entitlement of the parties.

Analysis and findings

17. Heard Id. counsels for the parties, as also the Id. Amicus Curiae. Though Id. counsels for the parties have raised issues to the effect that the genuineness and validity of the Will cannot be gone into in land acquisition proceedings, in order to determine as to who is entitled to compensation, the question that arises in these petitions is slightly different. In the present case, the award, apportioning the compensation amount into 1/4th each in favour of Sh. Hari Singh and his three sons has already attained finality. The three sons/ their families have also been disbursed the compensation.

After the passing of the award, Sh. Hari Singh has passed away on 24th April, 2011. It is his 1/4th share which is in dispute. The Id. Single Judge while upholding the award dated 7th August, 2008 had observed that the competing claimants for Sh. Hari Singh's share would be entitled to avail of their remedies as per law. While the said adjudication remained pending, the Executing Court was directed to ensure protection of the interest of all the claimants. The Executing Court has thereafter framed an issue for determination in respect of the Will dated 27th February, 2003 and the matter was at the stage of evidence. The officials from the Sub-Registrar office Basaidarapur had in fact, on 30th September, 2016 produced the official record showing the registration of the Will of Sh. Hari Singh. The evidence was to be continued and at that stage, objections were raised that since the Will was not probated, the Executing Court could not proceed further in the matter.

18. First, it is the settled legal position that in Delhi, it is not compulsory to obtain a probate to enforce a Will. In ***Ravindra Dayal v Shashi Mehra RC Rev 544/2011 (Decided on 7th August, 2015)***, a Id. Single Judge of this Court has held as under:

“22. It is trite law that in Delhi Will is not required to be probated. In Shri Shivraj Krishan Gupta & Ors. vs. Sh. Chander Krishan Gupta & Ors. 2007(96) DRJ466 this Court held that no probate is required in the State of Delhi. Further in Rajan Suri and Anr. v. State and Anr. AIR 2006 Delhi 148, this Court noting the various decisions on the issue that a person has a right to set up a Will even in collateral proceedings and there is no need of obtaining probate held:

31. It is thus apparent that no right as executor can be established in any Court unless probate or letters of

administration have been obtained of the Will in view of the provisions of Section 213 of the said Act. However, the said Section 213 would have no applicability in Delhi and it is not necessary to obtain probate of a Will in Delhi before any claim is based on that Will. A person has a right to set up a Will even in collateral proceedings and there is no need of obtaining probate thereof. In this behalf, reference may be made to the judgment in Behari Lal Ram Charan v. Karam Chand Sahni which has been followed by this Court in Sardar Prithipal Singh Sabharwal v. Jagjit Singh Sabharwal 1996 (III) AD (Delhi) 281. It was observed in Behari Lal Ram Charan case (supra) as under:

"From a bare perusal of these two sections it is apparent that the objection of defendant No. 1 on the preliminary issue raised by him in the trial Court was without any substance Clause (a) of Section 57 read with Sub-section (2) of Section 213, it would appear applies to those cases where the property and parties are situate in the territories of Bengal, Madras and Bombay while Clause (b) applies to those cases where the parties are not residing in those territories but the property involved is situate within those territories, Clause (c) of Section 57, however, is not relevant for the present purpose, Therefore, where both the person and property of any Hindu, Budhist, Sikh or Jaina are outside the territories mentioned above, the rigour of Section 213, Sub-section (1) is not attracted."

Thus, for a Will to be recognised in Delhi, it is not necessary to obtain a probate. It can be considered, upheld and recognised in collateral proceedings, provided the Will is proved in accordance with law.

19. The question that arises here is whether in execution proceedings, can

the genuineness and validity of a Will be gone into and the competing claims of parties be decided.

20. The question as to whether courts dealing with claims under Section 30 and 31 of the Land Acquisition Act can go into the genuineness and validity of the Will does not arise in this case and hence the judgments in respect of the said proposition need not be referred to. The stage of these proceedings are beyond the stage of Section 30/31 proceedings.

21. The recently delivered judgment of the Supreme Court in ***Varadarajan v. Kanakavalli & Ors (supra)*** which is cited by the Id. Amicus Curiae considered the question as to whether an Executing Court, can implead a legal heir on the basis of a Will. The High Court had observed that the execution of the Will was surrounded by suspicious circumstances and had thus relegated the parties to a Civil Court. The Supreme Court reversed the High Court's decision and held as under:

“6. The High Court held that the Executing Court is the competent and proper Court to determine the validity of the Will as well as the legatee under a Will can be construed as a legal representative and come on record to seek execution of the decree. However, the High Court found that the execution of the Will was surrounded by suspicious circumstances. It may be noticed that the High Court in revisional jurisdiction has interfered with the findings of fact recorded by the Executing Court in respect of execution of Will arrived at after considering the evidence led by the parties. The High Court found that as per the appellant, the decree holder, Umadevi, was driven out of her house by her step son Munisamy Naicker and was staying with her sister for nearly 20 years but the execution of the Will at the last moment is a suspicious circumstance. The High Court returned the following findings:

“19. In view of all the above facts which were established by way of evidence, this Court is of the view that the propounder on whom the allegation casts upon to dispel the suspicious circumstances surrounded the execution of the will. Further, the Court below has not given satisfactory reasons while coming to the conclusion that the will was proved. In the absence of satisfactory evidence, I am unable to ascertain as to whether the will was executed by the testatrix. Therefore, when once it is held that the very execution of the will has not been proved and it is not genuine, consequently, the legatee under the said will cannot become a legal representative to come on record in order to maintain the execution petition in the place of the decree holder, i.e. the testatrix.”

7. We find that the order of the High Court is not sustainable in law. The appellant claims to be the legal representative of Umadevi on the basis of the Will executed by her. He has produced an attesting witness and the scribe of the Will. The witnesses have deposed the execution of the Will by Umadevi in favour of the appellant who is the son of her sister. No one else has come forward to seek execution of decree as the legal representative of the deceased decree holder. It is Umadevi who has filed the execution petition but after her death, the appellant has filed an application to continue with the execution. In the absence of any rival claimant claiming to be the legal representative of the deceased decree holder, the High Court was not justified in setting aside the order of the Executing Court, when in terms of Order XXII Rule 5 of the Code, the jurisdiction to determine who is a legal heir is summary in nature.

....

14. In view of the aforesaid judgments, we find that the appellant is the sole claimant to the estate of the deceased on the basis of Will. The Executing Court has found that the appellant is the legal representative of the

deceased competent to execute the decree. In view of the said fact, the appellant as the legal representative is entitled to execute the decree and to take it to its logical end.”

Thus, the Supreme Court upheld the proposition that the Executing Court can determine the validity of the Will as well as the legality of the Will and bring a legal heir on record. The only distinction is that in the said case there was no other competing claim of any other party challenging the Will.

22. The powers of an Executing Court under Order XXI CPC are extremely broad. Illustratively, the Executing Court, under Order XXI Rule 32 CPC, in a decree for specific performance can direct that the act required to be done by the Judgment Debtor shall be done and costs for the same can be directed to be borne by Judgment Debtor. Under Order XXI Rule 34 CPC the Executing Court can make endorsement of negotiable instruments and also direct registration of documents. Under Order XXI Rule 35, in decrees for immovable property, the Court has very wide powers, and can take all steps necessary for ensuring that the decree is fully given effect to and is implemented. For the said purpose the Executing Court can also pass various orders of attachment, for example, under Order XXI Rule 46C CPC, where any garnishee disputes liability, the Executing Court can frame an issue. The said issue is to be tried as if it is an issue in a suit and the Executing Court can pass orders thereafter. Under Order XXI Rule 58 CPC, the Executing Court can also adjudicate claims and objections in respect of attachment of property. Under Order XXI Rule 58 (2) CPC questions relating to right, title and interest which arise between the parties in respect of any property can also be determined by the Executing Court. In the case of movable property, the Executing Court can adjudicate any issue that arises during execution of the decree and the order passed would in fact be treated as a decree. Adjudication

of rival claims in respect of immovable property can always be done by Executing Courts, and therefore compensation that is in lieu of acquisition of immovable property need not be treated differently.

23. The rationale behind conferring wide powers on executing courts is clearly to ensure that in case of passage of time and happening of any event - including death of a particular person, parties' rights are adjudicated expeditiously and competing claimants are not relegated to civil courts for re-trial, which could delay the execution of decrees to a great extent. There is no reason as to why a different principle ought to be adopted in the case of an Executing Court which is disbursing compensation for land acquisition.

24. In the present case, there are competing claims – by the two sons on the one hand and on the other hand the grandsons of Sh. Hari Singh i.e., sons of the pre-deceased Surat Singh claim rights to the compensation i.e., Sh. Hari Singh's share, on the basis of Will dated 27th February, 2003. Thus, the question is whether the Executing Court can enquire into the question as to who is entitled to the compensation amount of Sh. Hari Singh, especially when one set of claimants have set up a Will. The award to the extent it awarded compensation in favour of Sh. Hari Singh and his sons is not being disturbed. The original award dated 7th August, 2008 is not under challenge, and the same has attained finality. The judgements cited which state that the executing court cannot go behind the decree need not be gone into as the award itself is not being disturbed in any manner. 3/4th of the compensation in terms of the award, has already been disbursed to the rightful claimants. It is only in respect of the 1/4th share where one of the awardees has passed away that there are competing claims. The pivot of these claims is a Will dated 27th February, 2003. The manner and method of proving a Will is well settled under Section 68 of the Evidence Act, 1872. If the Will is proved, the beneficiaries under the Will

would be entitled to compensation and if the same is not proved, the Executing Court would examine the claims of the competing parties and decide as to which of the parties would be impleaded as the legal heirs of the deceased and accordingly disburse the compensation of Sh. Hari Singh in favour of the said legal heirs.

25. The Executing Court has already framed an issue in this matter. The Executing Court can enquire into the genuineness and validity of the Will by recording the evidence of the witnesses, whose evidence may be adduced by the parties. There is no impediment as to why an Executing Court cannot go into the genuineness and validity of a Will. No special rule needs to be adopted in respect of compensation matters concerning land acquisition, inasmuch as the award, which has been passed and has attained finality, has to be implemented and given effect to by the Executing Court just like any other decree. In Delhi, there is no requirement for the Will to be probated. The genuineness of the Will, can be ascertained in executing proceedings, and the Executing Court can then proceed in accordance with law.

26. Accordingly, the impugned order is set aside. The Executing Court would record further evidence in the matter on the issue that has already been framed vide order dated 5th July, 2016. Upon adjudicating the said issue, the compensation shall be disbursed in accordance with law. The petitions are accordingly allowed in the above terms.

27. The Court records with appreciation, the assistance rendered by the Ld. Amicus Curiae as also all the counsels for the parties.

PRATHIBA M. SINGH
JUDGE

APRIL 27, 2020
dj/ RG