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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 14th November, 2019
Date of decision: 19th March, 2020

+ **CM (M) 1244/2018 & CM APPL.42451/2018**

PREM SINGH Petitioner

Through: Mr. Sanat Kumar, Senior Advocate with
Mr. Ravi Joshi and Mr. Vinayak Batta,
Advocates. (M:9873980084)

versus

GIRDHARI DHARA Respondent

Through: Mr. Neeraj Yadav and Ms. Aditi Sharma,
Advocates. (M:9899426760)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The present petition under Article 227 of the Constitution of India challenges the impugned order dated 1st June, 2018 by which the objections filed by the Petitioner – Mr. Prem Singh have been dismissed by the Executing Court. The petition also challenges the order dated 17th July, 2018 by which the Petitioner's objections have been disposed of as withdrawn.

2. A suit for possession and recovery was filed in 1977 by one Mr. Girdhari Lal Dhara against four Defendants - Mr. Amin Chand, Mr. Jagan Singh, Mr. Prem Singh and Mr. Dhiraj Singh. The land ("*suit property*") is described in para no.1 of the plaint as under:

"1. The plaintiff is the owner of the land measuring 4000 sq. yds. comprised in Khasra No. 742, situated in

the revenue estate of Village Mandawali, Fazalpur, Delhi. The plaintiff constructed thereon a Cinema measuring 450 sq. yds, one room 24' x 24' on the corner side (north west), and one room measuring about 24' x 24' on the side of the north west corner and three room back side. The constructed premises is shown in attached site plan and the same is annexed as Annexure-1."

3. The case of the Plaintiff was that Defendant Nos.1 and 2 approached the Plaintiff for grant of a license for running a cinema in the suit property, which was granted on 15th November, 1971 for a monthly license fee of Rs.2,000/- per month. Since the requisite permissions could not be obtained, the property could not be put to use. In February, 1972, possession was given back to the Plaintiff, however, on 1st April, 1972 an attempt was made to take forcible possession. An injunction suit was filed by the Plaintiff, which was settled by a compromise arrived at on 7th June, 1972. One of the terms of the compromise was as follows:

"(d) That the defendants shall use the premises for cinema purposes only and not for any other purpose."

On the basis of the compromise, which was entered into, the Defendants used the suit property. It was the Plaintiff's case that Defendant Nos. 1 & 2, without permission from the Plaintiff, thereafter permitted Defendant Nos.3 & 4 to use the said site. As per the Plaintiff, Defendant Nos.1 & 2 were allowed the use the land admeasuring 2,700 sq. yds in terms of the compromise, but the said Defendants used even the adjoining land unauthorizedly, and also carried out construction in the property. The Plaintiff called upon the Defendants to vacate

and since the Defendants did not vacate the property, a suit for possession was filed. The prayer in the suit was as under:

“It is, therefore, prayed that a decree for possession of the suit premises i.e. the land measuring 4000 sq. yads. in khasra no. 742 situated within the revenue estate of Village Mandawali, Fazalpur, Shahdara, Delhi alongwith the decree for Rs. 90,000/- as arrears of mesne profit/damages for use against the defendants. Without prejudice to the right of the plaintiff to recover damages, it is submitted that if the defendants assert themselves as tenants and the court holds them as tenants, the decree for the said amount be passed as arrears of rent. Cost of the suit be also awarded. Any other relief which this Hon'ble Court deems fit and proper be also awarded to the plaintiff.”

4. Defendant Nos.3 and 4 filed their written statement, wherein they admitted that the Plaintiff was the landlord and Defendant Nos.1 and 2 were the tenants. It is the case of Defendants 3 & 4 that since the construction of the cinema hall could not be carried out by the Plaintiffs, they had joined Defendant Nos.1 and 2 for investment in the construction and running of the cinema hall. The Defendant Nos.3 and 4 claimed that they completed construction in the cinema hall in October, 1973 and the same was opened on 2nd December, 1973. The Defendant Nos.3 and 4 were inducted in the property with the consent of the Plaintiff. The plaint did not annexe the site plan, though there is a mention of the site plan in paragraph no. 1 of the plaint. Defendant Nos.3 and 4 filed a joint written statement in which an objection was taken that since the site plan had not been provided to them, the correctness of the site

plan is denied. It was also averred in the written statement that the measurements of the suit property in the plaint were not correct. Paragraph No.1 of the written statement is reproduced below:

“On Merits:

1. That para No.1 of the plaint is wrong hence denied. It is submitted that the plaintiff is the landlord qua defendants No.1 and 2. It is falsely stated by the plaintiff that he constructed the cinema hall. It is submitted that the plaintiff expressed his inability to undertake construction due to lack of finances and resources and accordingly the plaintiff requested the defendants to construct the cinema hall and the plaintiff undertook to reimburse or pay the costs thereof. It was on the understanding that the plaintiff had to construct a cinema hall as per rules and sanctions that the rent would be @ Rs.1500/- p.m. As the plaintiff could not undertake the construction as afore-stated and could not come forward for settlement about the cost of construction, the matter kept hanging. It is submitted that the tenancy of the premises vests with defendant No.1 and 2 and they had to start with joined the replying defendant and defendant No.4 for making investment on the construction and for running the cinema. The copy of the alleged plan has not been supplied, so its correctness is denied. The measurements given in the para of the plaint are not correct. It

is denied that the hall etc. were constructed by the plaintiff.”

5. Issues were framed in the suit on 4th December, 1981. The same are extracted below:

- “1. Whether Defendant no. 1 and 2 are licensee in respect of the property in dispute? OPD*
- 2. Whether Defendant no. 1 and 2 used the land over and above the land measuring 2700 sq. yards illegally and unauthorisedly? OPD*
- 3. To what amount, if any, the plaintiff is entitled as damages? OPP*
- 4. Whether the suit is barred under Order 2 Rule 2 of the Code of Civil Procedure? OPD*
- 5. Whether the suit is bad for mis-joinder of parties? OPD*
- 6. Whether the suit is barred under Section 50 of the Delhi Rent Control Act? OPD*
- 7. Relief.”*

6. The Id. Single Judge decreed the suit on 28th August, 2001. The findings are as under:

- i) Defendant Nos.1 and 2 were licensees in the suit property.
- ii) Defendant Nos.3 and 4 were in occupation of the entire suit property apart from the original 2,700 sq. yds. The Defendants unauthorizedly took possession of 1,300 sq. yds, thus *mesne* profits were liable to be paid.
- iii) *Mesne* profits of Rs.2,000 per month for a period of three years were awarded.

The operative portion of the decree reads as under:

“This suit coming on this day for final disposal before this Court in the presence of the counsel for the parties as aforesaid while the defendant Nos.1 &2 having been proceeded against ex-parte, it is ordered that a decree for possession of the suit property shown in red in the site plan Ex. PW.2/1 and Rs. 72,000/- towards mesne profit be the same is hereby passed in favour of the plaintiff and against the defendants.

It is further ordered that the defendants are however allowed four weeks time to hand over possession thereof of the plaintiff.

It is lastly ordered that the defendant herein do pay to the plaintiff herein the proportionate costs of Rs.6,561.80Ps. (Rupees six thousand five hundred sixty one and paise eighty only) of the suit incurred by the latter as taxed by the Taxing Officer of this Court.

7. The site plan, which was prepared and forms part of the decree, was exhibited by the draftsman - Mr. S. Pippal. His deposition is relevant, and is set out below:

“I am a draftman, working in District Court at Tis Hazari. I have seen the plan Exhibit PW 2/1. This plan has been prepared by me and bears my signature. The plan is correct as per the situation of the site. The plaintiff had accompanied me when I visited the site for

preparing this plan. Exhibit D1 was shown to me by the plaintiff and I found it to be in accordance with the situation existing on the plot.

xxxxxx by Sh. B. I. Singh, for Defendants 3 & 4.

Exhibit D1 is the document which was shown to me. Again said, I cannot say whether this was the document which was shown to me or its copy was shown to me. I had visited the site about two months ago. One hall, 2 rooms along with three rooms in the rear existed in property in question. I had seen the entire property only from the rear lane. I prepared my plan on the basis of the inspection from the rear lane and from the gate. I had taken measurement only on the site of rear lane. I did not make any attempt to enter this property. The width of front gate is not more than 10 ft. It is correct that there is no entrance to this property from the rear side. There is 6-7 feet high boundry wall, on the rear side. Cinema hall has been constructed there but it is not functional. It is wrong to suggest that I never visited the site and that I have prepared this plan only on the instruction of the Plaintiff.”

8. The journey of this litigation takes an interesting turn after the passing of the decree. RFA (OS) 29/2001 was filed challenging the decree. The said appeal was primarily argued on the question of Order II Rule 2 CPC, and was dismissed vide judgment dated 23rd September, 2008. A SLP, being SLP (Civil) No. 30633/2008 was filed, which was also dismissed by the Supreme Court on 7th January, 2009.

9. Defendant No. 3- Prem Singh, who is the Petitioner herein, then started independent proceedings by filing a suit against Mr. G. L. Dhara, Mr. Amin Chand and Mr. Jagan Singh. The relief sought in the suit is as under:

“i ... decreeing the suit in favour of the Plaintiff and against the defendants and the defendants be restrained by way of permanent injunction from interfering in the manner in the ownership right and title of the property and possession of the plaintiff without due process of law in respect of property bearing no. Khasra No. 742 measuring 3 bigha 6 biswa approx. 3324 square yards in Mandawali Fazalpur, Delhi which is in the name of the plaintiff

10. On 18th May, 2018, Mr. Prem Singh moved an application before the SDM for demarcation of Khasra Nos. 742 and 743.

11. After the SLP was dismissed, on 30th March, 2009, execution petition seeking execution of decree dated 28th August, 2001, which had been filed earlier, was revived. Bailiff was appointed by the executing court on 18th September, 2009. In the said proceedings, on 18th September, 2009, time was granted to Mr. Prem Singh to file objections. One Mr. Kishan Pal Singh, who is related to Mr. Prem Singh also filed objections to the execution. The statement of Mr. Prem Singh was recorded by the Court under Order X CPC. Since the bailiff could not take possession of the property, the Decree Holder – Mr. G.L. Dhara filed an application under Order XXI Rule 97 CPC.

12. On 27th November, 2009 the Court noticed that Mr. Prem Singh had filed an application with *mala fide* intentions to obstruct the execution proceedings and had also made allegations against the Court staff. The executing court

observed that Mr. Prem Singh was causing delay in the execution of the decree, and the application was thus dismissed. Arguments were then heard on the application under Order XXI Rule 97 CPC filed by the Decree Holder. The executing court, vide order dated 8th December, 2009 records that when the bailiff went for execution of the warrants of possession on 29th September, 2009 the entire structure of the cinema had been demolished and various anti-social elements were also present at the time to obstruct the execution of warrants of possession. The second objector, Mr. Kishan Pal Singh claimed that he had purchased the property vide a registered sale deed on 6th August, 1994. In the execution petition, on 3rd December, 2011 the following issue was then framed:

“1) Whether the objector/ obstructionist Sh. Kishan Pal Singh is the bonafide owner of property measuring 3 bigha 3 biswa bearing Khasra no. 742 within the estate of Village Mandwali Faizal Pur, Ilaka Shahadara, Delhi-92 having purchased the same vide sale deed dated 06.08.94? onus of proof on objector.”

13. Evidence was thereafter recorded on the above issue. On 19th August, 2014, the objections filed by Mr. Kishan Pal Singh were dismissed. The findings in the said judgment are as under:

“16. Considering the claim put forth by the objector with respect to the ownership of the property, I have analyzed his testimony recorded as OW-1. The witness has failed to remain consistent and confident with respect to the averments. The documents such as

GPA, Agreement to Sell, Will and receipt etc. have not been proved in accordance with the rules of the evidence as the executors of the documents have not been examined in evidence. The material witness Sh. Sundaresan has not been examined despite number of opportunities availed to summon him. The objector Sh. Krishan Pal Singh contradicted his own statement by firstly stating that he does not know judgment debtor but later revealing that he is related to Sh. Prem Singh being the father-in-law of his brother Sunder. With respect to the testimony of OW-2, I find that witness has also failed to give sufficient evidence to prove the claim of the objector. The witness stated to have signed the documents EX OW-1/2 to 5 but denied that any other witness signed the documents in his presence. The documents show that witness namely, Sh. V.K. Vishwabraham also signed. The witness also demolished the claim of the objector by stating that he was not knowing G.L. Dhara prior to the execution of documents and he signed the documents on mere asking of Sundaresan.

17. The objector was required to prove and establish before the court that decree holder genuinely executed GPA, Agreement to Sell, Will and receipt in favour of Sundaresan but the objector has failed to prove the same by bringing sufficient evidence on record. The material witness Sundaresan has not been examined in support of these documents. With respect to the presumption u/s 85 Evidence Act, as pointed out by Ld. counsel for objector, I am of the opinion that presumption is rebuttable and the report of FSL clearly falsifies the execution of said document by the decree holder.

18. On examining the report of CFSL, I find that due care has been taken by the court to provide documents with admitted signatures for comparison with the questioned signatures. I find no reason to disbelieve the report of CFSL with respect to which no objections have been filed on behalf of the objectors. The decree holder has made categorical statement in the reply denying the signatures on the documents and therefore it has not been necessary for the decree holder to have entered into the witness box. The issue with respect to the ownership of the suit property has not been proved or established by the objector on the record, the issue is decided against the objector and in favour of the decree holder.

19. There has been long drawn litigation between the parties with respect to the dispute. The objector is related to judgment debtor and there is every possibility that the objections have been filed only to delay the execution. There is no merit or substance in the objections and accordingly warrants of possession be issued with respect to plot measuring 3 bighas 6 biswas bearing Khasra No. 742, within the revenue estate of village Mandawali Fazalpur, Illaqa Shahdara, Delhi-110092.

20. In view of the findings to the above mentioned issue, finding no merit or substance, objections are dismissed.”

14. On 17th April, 2018 the objections of the Judgment Debtor - Mr. Prem Singh were dismissed. The findings of the executing court are as under:

“10. Thus, as per judgment dated 28.08.2001, which was upheld in judgment passed by Division Bench of Hon'ble High on 23.09.2008, judgment debtor No.3

never claimed to be owner of the property. Objector / JD No.3 alongwith the objections has filed an order of the Revenue Assistant dated 22.03.1988 and perusal of the said order reveals that an application was filed by the objector before Revenue Assistant, Shahdara for declaration of bhumidari rights on the ground that he and Dhiraj Singh (JD No.4), sons of Kishan Lal were in adverse possession of the land in question without consent of the recorded bhumidar since 1975-1976 onwards and no ejectment suit was ever filed by recorded bhumidar. The objector did not disclose that said order was challenged before the ADM, however, decree holder alongwith the reply filed certified copy of the judgment dated 12.09.1994 passed by Additional Collector, Delhi, in which aforesaid order dated 22.03.1988 was challenged and was set aside by the Additional Collector. The said order of the Additional Collector was challenged by Prem Singh (JD No.3) and his brother Dhiraj Singh (JD No.4) before the Financial Commissioner, but the said challenge was also not successful and the order of Additional Commissioner dated 12.09.1994 was upheld by Financial Commissioner by order dated 18.10.1994. Therefore, as far as Revenue Authorities are concerned, the objector failed to prove his bhumidar rights before Revenue Authorities and his rights were decided finally by Financial Commissioner by order dated 18.10.1994. The objector even on the civil side failed to prove ownership of the property, because of which, the suit was decided against four defendants including the objector i.e. defendant No.3 and his brother defendant No.4. Therefore, on the civil side as well as on the revenue side, the objector has failed to prove his title to the suit property. He has

relied upon Khasra Girdawari of the year 1988 in order to prove his title to the property, however, in view of the order of Additional Collector dated 12.09.1994 upheld by Financial Commissioner by order dated 18.10.1994, the said entries are of no consequence and do not create bhumidari rights in favour of the objector.

11. The objector has also challenged the execution petition on the ground that the decree holder has entered into Agreement to Sell the suit property to other persons including Professor Mahavir Educational, Welfare and Cultural Society as well as with the Ravinder Chadha. However, admittedly no sale deed has been executed as yet by the decree holder in favour of any person and therefore merely because there are Agreements to Sell with some other persons, does not take away the rights of the decree holder to execute the decree dated 28.08.2001, which has been upheld right upto the Apex Court.

12. It is interesting to note that the objector admits in para 13 of the objections on page 9 "that the applicant / objector contested the suit and applicant / objector claims ownership of the suit and super structure. The suit was decided against the applicant / objector on 28.08.2001". Having admitted that the suit was contested and that the same was decided against the objector, the objector still filed the present objections on the ground as stated in para 14 of the objections "that in the said suit no issue was framed about the title or ownership and the court rightly declined to decide the same in absence of the issue and left it open". It is interesting to note that after having admitted that the Hon'ble High Court decided the suit against the objector, the objector is still harping upon

the same issue again and again and trying to challenge the decree, which has been upheld in appeal and also by Hon'ble Apex Court in SLP.

13. At this stage, the court would like to reproduce two small paras from the judgment of Division Bench of Hon'ble High Court dated 23.09.2008 by which the judgment and decree dated 28.08.2001 was upheld relating to the claim of the objector as well as ownership and bhumidari rights.

"2. We find that even though the suit remained pending before trial court for twenty -three years, the said documents were not placed on record. Moreover, we do not understand as to what is the significance of these documents when there is no pleading or issue that Appellants are the owners of the suit property.

3. In fact, in reply to the said application, the Respondent No.1 has pointed out that a petition for declaration of bhommidari rights was fraudulently and collusively filed by the Appellants but the same was dismissed by the Additional Collector, Delhi and Financial Commissioner, Delhi. The Appellants' writ petition against the said order was also dismissed."

14. The said two paragraphs make it clear that there were no pleading of appellants / objector Prem Singh Verma in the civil suit regarding ownership of the suit property and that the objection for declaration of bhumidari rights was dismissed by Additional Collector and Financial Commissioner, Delhi and even writ petition against the said order was also dismissed.

After the said observation of Division Bench of the Hon'ble High Court, it did not lie in the mouth of the objector to again come before this court and file objections asserting the same pleas again and again, which were discussed and decided by the Hon'ble High Court way back in 2001 and 2008.

15. As it is stated earlier that it was observed by Hon'ble High Court in order dated 24.09.2014, that Kishan Lal Singh who had filed objections earlier was none else but the father-in-law of Sunder i.e. brother of JD No.3 Objector, hence it seems from the said facts and from the orders of Hon'ble High Court as well as orders of Learned Predecessor of this court and the manner in which objections have been filed one after the another, that the objector is trying to prevent the execution of decree one way or the other and the said conduct of JD No.3 / objector has to be depreciated.

16. Accordingly, the objections are hereby dismissed with cost of Rs.25,000/- payable by the JD No.3 / objector to the decree holder.

17. Let warrants of possession with permission to break open the locks and police aid in respect of suit property issued on filing of PR DH is directed to appear before Learned ACJ on 03.05.2018 ajid to appear before this court on 18.05.2018."

15. Objections were again filed by Mr. Prem Singh, which were dismissed on 1st June, 2018. The ground taken therein was that the decree in respect of the suit property is only in respect of Khasra No. 742 and not Khasra No. 743. On this issue, the executing court held as under:

"6. It may further be noted that in this regard, no question was put by learned counsel for judgment debtor No.3 at the time of lengthy cross examination of PW-1/plaintiff Girdhari Lal. No suggestion or question was put that Khasra No.742 is not adjacent to the main road and that the entrance from the main road to Khasra No.742 actually falls in Khasra No.743 which is owned by judgment debtor No.3.

7. Alongwith the objections, the objector has filed his title documents with respect to 80 square yards of land purchased by him in Khasra No.743, Village Mandawali, Fazalpur i.e. Notarized GPA, Agreement to Sell and registered receipt dated 29.09.1987.

8. The location of the 80 square yards of land measuring 15 ft. X 49 ft. is stated in GPA as under:-

"Whereas the Executant are the actual owner and in possession of a Portion of Property No. ,and measuring 80 Sq. Yds. (15' X 49') out of Khasra No.743 situated at Vill. Mandawali Fazelpur near Aproch Road Kishan Talkies, illaqa Shahdara Delhi and bounded as under:-

East:- Property

West:- Lane 15 ft.

North:- Main Road Mandawali Fazelpur

South:- Property, of Kishan Talkies."

9. In agreement to sell the said land is described as under:-

"Whereas the party No.1 is the actual owner and in possession of a portion of property

No. land measuring 80 Sq. Yds. (15'X49') out of Khasra No. 743, situated at Village Mandawli Fazelpur near approach Road, Kishan Talkies, illaqa. Shahdara Deihi-92 which is now sold by the party No.1 to the party No.2 for the consideration amount of Rs.48,000/-. The entire amount has been received by the party No.1 from the party No.2 before the S.R. IV, in Cash vide separate receipt."

10. As per the GPA itself, the land which was purchased by judgment debtor No.2 and his brother Dheeraj Singh was purchased "near Aproch Road Kishan talkies" and the location of the said approach road is on the west side of the land purchased by judgment debtor No.3 and his brother, as per the boundaries mentioned in the said document, on the East, there is property of other, on West side there is a 15 ft. wide lane, on North is the Main Road Mandawali Fazeipur and on the South is property of Kishan Talkies. It means that on the West side is the said approach road which is mentioned in GPA as well as Agreement to Sell, as it is mentioned in both the said document that the said 80 sq. yards of land situated "at Village Mandawali, Fazelpur near approach road, Kishan Talkies, illaqua Shahdara, Delhi"

11. Therefore, even as per document of objector executed in September 1987, there was approach road 15ft. Wide to Kishan Talkies i.e. the suit property, which strengthen the case of the decree holder, that the objections being raised by the objector / judgment debtor No.3 / defendant No.3 are false, merely to retain possession of the property one way or the other. It is precisely for this reason that the site plan was not

objected to when it was exhibited and proved and no question or suggestion was given to the effect that the suit property was found locked and that there was no approach road to the same from the Main Road Mandawali, Fazelpur.

12. Decree dated 28.08.2001 is "decree of possession of the suit property shown in red in the site plan Ex. PW 2/1" and the said site plan was duly proved in presence of judgment debtor No.3 / objector and no question about its correctness were raised at that stage and now the same is being assailed on the basis of documents dated 29.09.1987, which them self mention that there was approach road to Kishna Talkies (i.e.- suit property) from the Main Road, Mandawali, Fazalpur. Learned counsel for judgment debtor No.3 was questioned with respect to the approach road to Kishan Talkies as mentioned in documents filed by judgment debtor No.3, however, he failed to explain that how come the suit property is found locked, if there was approach road as mentioned in the documents.

13. Accordingly, the objections filed by judgment debtor No.3 are devoid of merits and hereby dismissed.

14. Objector has also filed application under Order XXI Rule 29 of CPC for stay of execution on the ground that he has filed civil suit in the court of Civil Judge. The present decree is of 2001 and now after seventeen years the execution can not be stayed because some suit is filed by judgment debtor No.3 with respect to the suit property. Judgment debtor No.3 is free to obtain stay order from the learned Court where civil suit is pending on merits.

15. The next date before the learned Civil Court stated to be 11.07.2018.

16. Accordingly, warrants of possession of suit property as per site plan Ex. PW 2/1 be issued on filing of PF alongwith police aid and permission to break open the locks / doors / wall etc. as may be required in the given circumstances for execution of the decree and warrants.

17. Decree holder to appear before learned ACJ for appointment of Bailiff on 16.07.2018 and to appear before this court on 03.08.2018.”

From the above, it is clear that the objection of Mr. Prem Singh, that there was no passage leading up to the cinema, as also the pendency of the injunction suit filed by him, were considered and rejected by the executing court.

16. A third set of objections was preferred by Mr. Prem Singh, which was dismissed as withdrawn on 17th July, 2018. Another set of objections was also filed by one Professor Mahavir Educational Cultural and Welfare Society. This set of objections was pressed on the basis of an alleged agreement dated 30th September, 2006, by which it was claimed that the Mr. G.L. Dhara had agreed to sell the land to the said Society, and CS (OS) 360/2009 was pending in the High Court. Since the Society had claimed that it had acquired possession of the property from Mr. Kishan Pal Singh, whose objections had already been dismissed on 19th August, 2014 which was also upheld by the High Court in EFA No.27/2014 vide order dated 24th September, 2014, the executing court held that the said Society could not claim any better rights than Mr. Kishan Pal Singh. The executing court further held that since no right, title or interest was

created by the agreement to sell, the Society could not resist or obstruct the possession of the suit property being given to the Decree Holder. The observations of the Court in its order dated 25th January, 2016 are as under:

“10. On 24.09.2010, when interim order in CS(OS) 360/2009 in High Court was passed, the applicant/objector was not in possession of the suit property. The application/objection conspicuously finds no mention of the date, month, or year of gaining of possession of suit property by applicant/objector from said Sh. Kishan Pal Singh. In his objections preferred by said Sh. Kishan Pal Singh and adjudicated by my ld. predecessor on 19.08.2014, there is no whisper of delivery of possession by him to the present applicant/objector Prof. Mahavir Educational Cultural & Welfare Society (Regd.). In the case of S.N. Arora (supra) it has been held that a transferee pendente lite cannot raise objection to his dispossession from the suit property. It is a settled principle of law that a person who claims to have taken possession from a person whose Objections have been dismissed cannot claim any benefit under the law. Since the agreement to sell in itself does not create any right, title or interest in terms of Sec. 54 of Transfer of Property Act the applicant/objector cannot claim protection of possession of suit property gained from Sh. Kishan Pal Singh as said Sh. Kishan Pal Singh could not deliver any valid right, title or interest in the suit property to applicant/objector. As per own version of applicant/objector, when the agreement to sell dated 30.09.2006 was executed in favour of applicant/objector, the possession of the suit property was not delivered to applicant/objector, so the applicant/objector cannot resist or obstruct to

obtaining of possession of suit property by decree holder solely on the premise of said agreement to sell dated 30.09.2006.

11. Accordingly, I find the application/objections of Prof. Mahavir Educational Cultural & Welfare Society (Regd.) to be frivolous, lacking substance and merits to put forth any resistance or obstruction in regaining of possession of suit property by decree holder in execution of decree. The application/objections under consideration are accordingly dismissed with costs of Rs. 10 000/-."

17. The present petition has now been filed challenging the orders dated 1st June 2018 and 17th July, 2018, by which the objections filed by Mr. Prem Singh have been rejected by the Executing Court.

18. In the meantime, a challenge to the same orders, being Ex. F.A. 31/2018 was filed before the High Court, which was dismissed on 1st October, 2018 with the following order:

"1. This Execution First Appeal invoking Order XXI Rule 97 of the Code of Civil Procedure, 1908 (CPC) was preferred against the orders / judgments [dated 1st June, 2018 and 17th July, 2018 in Ex.No.23918/2016 of the Court of Additional District Judge-01 (Central)] dismissing the objections of the appellant / defendant / judgment-debtor and issuing warrants for recovery of possession of immovable property.

2. The appeal came up first before this Court on 20th July, 2018 when, though prima facie observing that the reasoning of the Executing Court appeared to be correct but for the reason of this being a First Appeal,

notice thereof was ordered to be issued and the warrants issued were ordered to be allocated for a date after the date of hearing before this Court.

3. The senior counsel for the appellant / defendant / judgment-debtor and the counsel for the respondent / plaintiff / decree-holder were heard on 28th September, 2018 when after some arguments, the senior counsel for the appellant / defendant / judgment-debtor sought adjournment.

4. Today, the senior counsel for the appellant / defendant / judgment debtor, under instructions, states that this appeal is not maintainable and he withdraws the same with liberty to file appropriate proceedings.

5. The counsel for the respondent / plaintiff / decree-holder opposes, contending that the appeal is maintainable and after fully arguing, the appellant / defendant / judgment-debtor cannot have recourse to a second round.

6. Be that as it may, since the appellant / defendant / judgment-debtor is withdrawing the appeal, it is deemed appropriate to dismiss the appeal as withdrawn with liberty as sought and leaving it open to the respondent / plaintiff / decree-holder to, in the appropriate proceedings if any taken, to contend that the remedy of appeal was available and the appellant / defendant / judgment-debtor having withdrawn the same, is not entitled to any other remedy.

7. It is ordered accordingly.

8. Needless to state, the interim orders stand vacated.

Dasti.”

19. A preliminary objection has been raised by Id. counsel for the Decree Holder. He submits that the objections of Mr. Prem Singh, having been dismissed, what would be maintainable is only a suit or appeal and not a petition under Article 227. Ld. Senior Counsel for the Judgment Debtor – Mr. Prem Singh has responded, and his submission is that the scheme of Order XXI CPC shows that there are separate provisions which deal with Judgment Debtors who are parties to the suit and those who are not parties to the suit. According to him, Order XXI Rule 35 CPC envisages that if free access is not provided to the property in respect of which the decree is executed, either by the Judgment Debtor or any person bound by the decree, then the power to remove or break open any lock etc. vests with the Decree Holder. According to him, persons bound by the decree would either be the Judgment Debtor or transferee *pendente lite*, as per Rule 102 of Order XXI CPC. No one else would be covered.

20. Insofar as third parties are concerned, it is his submission that Order XXI Rule 97 CPC permits such parties to raise objections to resistance or obstruction being caused to possession being given of the immovable property. Such objections have to be decided as per the scheme of Order XXI Rule 97 CPC and thereafter, Rules 98, 99 and 101. It is his submission that when there are objections raised by third parties i.e., persons who are not bound by the decree, the same would be governed by Rules 97 to 101, however, persons bound by the decree would be governed by Order XXI Rule 35 CPC.

21. He also submits that Section 47 CPC envisages questions to be determined by the Court which is executing the decree and this would also only be between parties to the suit or their representatives i.e., the Judgment Debtors or their representatives. Thus, he submits that while an appeal is provided for third parties who object to the execution of a decree, there is no appeal which is provided for parties who are bound by the decree i.e., the Judgment Debtors or transferee *pendente lite*. Thus, Article 227 can be invoked by such persons. He relies upon the judgments in ***Shri Tejpal Singh v. Shri Hardit Singh, etc. EFA (OS) 3/1980, Decided on 7th May, 1980*** as also ***Bhanwar Lal v. Satyanarain & Anr., (1995) 1 SCC 6.***

22. It is further submitted that the site plan, having only been filed after the cross-examination of PW-1, the question as to whether the decree, which is only in relation to Khasra No.742, can be executed in respect of Khasra No. 743, is to be adjudicated by the executing court and the non-filing of the site plan is in violation of the stipulation contained in Order VI Rule 3 CPC. He relies upon the judgment of the Madras High Court in ***A/M Kothandaramasamy Koil v. Vairam SA (MD) No.15/2008 (Decided on 3rd January, 2012)*** and the Madhya Pradesh High Court in ***Laxman Singh v. Jagannath, 2000 (1) MPHT 384*** in support of his submissions.

23. Ld. counsel appearing for the Respondent-Decree Holder has challenged the maintainability of the present petition on the ground that the dismissal of the objections under Order XXI Rule 97 CPC has culminated into a decree and thus, is appealable under Order XXI Rule 103 CPC. He submits that the

petition under Article 227 is, thus, not maintainable. He relies upon the judgment of the Supreme Court in ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal & Anr., (1997) 3 SCC 694*** wherein the Supreme Court holds that 'any person' as contained under Order XXI Rule 97 CPC includes, apart from the Judgment Debtor, anyone claiming through him and even a person claiming independently or who are the transferees to the decree. He submits that in view of this decision, the petition deserves to be dismissed at the outset. He further submits that the Judgment Debtor – Mr. Prem Singh has availed of his remedy by filing Ex. F.A. 31/2018, which was also withdrawn and the Judgment Debtor having withdrawn the said petition, the present petition is not maintainable.

24. On merits, it is the submission of Id. counsel for the Decree Holder that the site plan, which is purported to be disputed today is the site plan, which was in fact filed by the Judgment Debtor itself before the Trial Court and the Executing Court. He relies upon two documents i.e. Ex.PW-2/1, the site plan prepared by the draftsman - PW-2 and Ex. D1, which form part of the Executing Court record, which was filed by the Judgment Debtor and also the coloured site plan filed by the Judgment Debtor. He further submits that these three site plans have one thing in common i.e. entrance through Khasra No. 743 and passage for access to the suit property. He further submits that the deposition of PW2 is clear to the effect that the site plan was prepared by him after inspecting the suit property. PW-2 clearly deposes that there is no entrance to the property from the rear side. He also deposes that there is no entrance to the property from the rear side but there is a gate on the front side of

the property. These clearly show that the access to the property was from the gate in the front side. He further submits that Mr. Prem Singh is guilty of delaying the execution of the decree in this suit, which dates back to 1977, and in fact even in Mr. Prem Singh's own documents of purchase, the passage is clearly mentioned, and the Executing Court found the same in its order (page 104 of the paperbook). He finally submits that Mr. Prem Singh is guilty of filing repeated objections before this Court. One set of objections were filed on 23rd October, 2009 which was dismissed as not pressed. A second set of objections were filed through Mr. Prem Singh's brother's father-in-law, Krishan Pal Singh, who posed as a purchaser of the property. The said objections were also dismissed by a Id. Single Judge of this Court on 24th September, 2014. The third set of objections were filed on 26th August, 2016, which were dismissed by the Executing Court on 17th April, 2018 and the said dismissal order has not been challenged. The present set of objections is, in fact, a fourth set of objections, which was filed on behalf of Mr. Prem Singh. The same was dismissed on 1st June, 2018 by the impugned order. He submits that Mr. Prem Singh did not rest there. Another set of objections was filed on 16th July, 2018, which was withdrawn on 17th July, 2018. He submits that the only attempt of the Judgment Debtor is to delay and to ensure that the decree is not given effect to and the land, which lawfully and legally belongs to the Decree Holder is not put to use by the Decree Holder. Thus, it is submitted that the present petition is not maintainable and is also liable to be dismissed on merits. The Trial Court's order does not warrant any interference. Id. counsel for the Plaintiff also relies upon the judgment in *Sameer Singh & Anr. v.*

Abdul Rab & Ors., (2015) 1 SCC 379 to argue that this case would not fall for challenge under Article 227 of the Constitution of India, as the distinction has been clearly drawn up in the said judgment. Ld. counsel further submits that in order to prevent execution of the decree, a wall has been constructed beyond the gate, however, Mr. Sanat Kumar, Id. Senior Counsel for the Judgment Debtor disputes this version.

25. In rejoinder Mr. Sanat Kumar, Id. Senior Counsel submits that the categories of applications under Order XXI Rule 35 CPC on the one hand and Order XXI Rule 97 CPC and Order XXI Rule 99 CPC on the other hand, cannot be treated in the same manner. Clearly, there is a difference between the two types of applications that can be filed by the Decree Holder and the objections which may be filed by the Judgment Debtor. The same would not be an appealable decree under Order XXI Rule 103 CPC. It is further submitted that in ***Brahmdeo Chaudhary***, the question was whether a third party's objection to the decree would be maintainable under Order XXI Rule 97 CPC or Order XXI Rule 99 CPC. Thus, the question as to whether "any person" includes the Judgment Debtor was a question, which was answered by the Supreme Court only in passing and was at best an *obiter*.

26. The present petition raises the following two questions:

- i. Whether the present petition under Article 227 is maintainable after the Ex. F.A. was dismissed as withdrawn on 1st October, 2018, though liberty was granted?

- ii. Whether the impugned orders dated 1st June, 2018 and 17th July, 2018 are liable to be interfered with?

27. The submissions, which have been made and recorded hereinabove, are in respect of the scheme of Order XXI CPC. An examination of Order XXI CPC clearly reveals that when a decree is to be executed, if any resistance is faced, there are various remedies available to the decree holder:

- (i) If free access is not afforded by any person who is in possession and who is bound by the decree, locks can be broken open and any act as is necessary for putting the decree holder in possession can be undertaken. (Order XXI Rule 35)
- (ii) If there is resistance or obstruction by any person who is in possession of the property, the decree holder can complain of all such resistance to the executing court by means of an application under Order XXI Rule 97 CPC. The Court can then come to the conclusion as to whether the resistance or obstruction was with or without just cause under Order XXI Rule 98 CPC, and such order would be treated as a decree under Order XXI Rule 103 CPC.
- (iii) The scheme is similar in respect of persons who are wrongfully dispossessed – such a party can approach the Court under Order XXI Rule 99 CPC, which would be considered under Order XXI Rule 101 CPC. Such an order would also be a decree under Order XXI Rule 103 CPC.

28. The question in this case is whether the impugned order is one passed under Order XXI Rule 97 CPC or under Order XXI Rule 35 CPC. A perusal of the records of the Executing Court would show that since the time the decree

has been passed, there have been objections after objections being filed by Mr. Prem Singh or instigated by Mr. Prem Singh or at the behest of Mr. Prem Singh. The said objections are:

- i. Objections by Mr. Kishan Pal Singh, who is a relative of Mr. Prem Singh i.e., his brother's father-in-law which were dismissed on 19th August, 2014.
- ii. Objections by Professor Mahavir Educational Cultural & Welfare Society, which claimed that it had obtained possession from Mr. Kishan Pal Singh -which were dismissed on 25th January, 2016.
- iii. Three sets of objections by Mr. Prem Singh, which were dismissed vide orders dated 17th April, 2018, 1st June 2018 and 17th July 2018.

29. In the entire process, the Decree Holder has also moved an application under Order XXI Rule 97 CPC in view of the resistance/ obstruction. All these objections/ applications were decided under various provisions of Order XXI CPC. The prayer in this petition is specifically in respect of orders dated 1st June, 2018 and 17th July, 2018, by which two sets of objections were dismissed. The objections were filed by Mr. Prem Singh under Order XXI Rule 97 CPC and under Order XXI Rule 29 CPC, which were rejected by the executing court. Further, even if the orders are treated as orders under Order XXI Rule 35 CPC by which locks could be broken open, either way, Mr. Prem Singh has availed of his remedies in law. A perusal of the order dated 1st October, 2018 in Ex. FA No. 31/2018 shows that Id. counsel for the Petitioner withdrew the said appeal “*under instructions*” and sought liberty to file proper proceedings.

The Court, while dismissing the appeal left open the question as to whether any remedy of appeal was available and whether any other remedy could be availed of by Mr. Prem Singh.

30. The question as to whether under Order XXI Rule 97 CPC, the Judgment Debtor would be included in the term “any person” in fact, as a question of law, need not even be decided in the present petition. The Supreme Court has, in ***Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal and Anr. (supra)*** held that ‘any person’ under Order XXI Rule 97 CPC includes the Judgment Debtor. The present petition is one under Art.227 challenging the orders rejecting the objections. The said orders have been passed in multiple objections preferred both under Order XXI Rule 35 and Order XXI Rule 97. Thus, the thin line which is sought to be drawn does not arise and the petition is being entertained.

31. In the present case, Mr. Prem Singh has been wearing various hats and has also ensured that the decree, which was passed way back in 2001 has not been executed till date. The original suit itself was of 1977 and the Petitioner herein has tried every trick to resist execution, despite being a party to the original suit. Such *mala fide* attempts by Mr. Prem Singh include:

- i. Filing of a suit for injunction after the decree was passed in the first Suit filed by the Decree Holder Mr. G.L. Dhara.
- ii. Filing proceedings before the SDM for demarcation, when the site plan was clear all along.
- iii. Filing of objections through a family member – Mr. Kishan Pal Singh.

- iv. Filing of objections thorough a Society, which claimed rights through the said family member – Mr. Kishan Pal Singh
- v. Filing at least three separate sets of objections under Order XXI Rule 97 CPC even after the order for breaking open locks was passed.

32. Thus, irrespective of whether Mr. Prem Singh is to be dispossessed under Order XXI Rule 35 CPC or after dismissal of objections under Order XXI Rule 97 CPC, the impugned orders cannot be deemed to be erroneous. Warrants of possession have been repeatedly issued by the executing court in this case. In fact, the order dated 17th April, 2018, which was objected to by Mr. Prem Singh, was a direction to break open locks under Order XXI Rule 35 CPC. Mr. Prem Singh himself has repeatedly invoked Order XXI Rule 97 CPC. The distinction sought to be drawn between these two provisions is only an attempt to conflate the entire issue, and nothing more. The executing court has, rightly, dismissed the objections of the Petitioner with costs. Thus, the petition is held to be maintainable and the impugned order is upheld.

33. Owing to the completely *mala fide* conduct and abuse of the Court process by the Judgment Debtor, the present petition is dismissed with costs of Rs.5 lakhs. Let the costs be paid within four weeks. If the same is not paid, the Decree Holder shall be entitled to recover the same in the execution proceedings, pending before the executing court. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

MARCH 19, 2020/dj/RG