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

Date of decision: 4th August, 2021

\+ **EX.F.A. 13/2021 & CM APPL. 24102/2021**

RAVI SHARMA & ORS. ..... Appellants
Through: Mr. Ravi Tikania, Advocate.
versus

ROHIT SHARMA & ANR. ..... Respondents
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.

2. The present appeal has been filed challenging the impugned order dated 4th March, 2021 by which the objections filed by the Appellants have been rejected by the Executing Court.

3. The brief background to this case is that Respondent No.1 filed a suit for recovery under Order 37 CPC for a sum of Rs.11,16,000/-, along with interest, against Respondent No.2. The said suit was decreed vide judgment/decree dated 24th May, 2016. The operative portion of the said decree reads as under:

> *"20. In view of settled propositions of law, and in the facts and circumstances of this case discussed hereinabove, I am of the considered opinion that the defendant has failed to raise any triable issue. So, in these circumstances, the defendant is not entitled to leave to defend the suit. The leave to defend application, is therefore, dismissed, and the suit of the plaintiff under order 37 CPC is decreed with cost.*

> *21. A decree for recovery of Rs. 11,16,000/- is passed in favour of the plaintiff and against the defendant alongwith interest @ 9% per annum from the date of filing of the suit till its realization. Cost of the suit is also awarded. Decree sheet be prepared accordingly. File be consigned to record room, after due compliance."*

The decree holder i.e., Respondent No.1 applied for execution of the said decree and in the said execution proceedings, the Appellants, filed their objections. In the execution petition, attachment order was passed on 7th July 2017, directing attachment of two shops.

> "*Accordingly, issue warrant of attachment of the movable properties of the JD (as per list filed by the DH) with police aid on filing of PF for the next date of hearing. The concerned SHO is directed to provide necessary police aid for execution of the warrant. The bailiff may break open the locks and doors of the premises of the JD, after confirming that the same belongs to the JD, so as to attach the movable properties of the JD.*
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> *Further, warrant/order of attachment of immovable property i.e. two shops shown in red colour in the site plan (annexed with the application filed today) out of property bearing no.21, Gali No.11, Block-A-2, West Sant Nagar, Burari, Delhi-110084 be issued prohibiting the JD from transferring or charging the said property in any manner and all persons from taking any benefit from such transfer or charge."*

This attachment was objected to by the Appellants/objectors on the ground that the said two shops did not belong to the Judgment debtor but to the Appellants who are her children.

4. The basic argument of the Appellants is that they are the children of Late Mr. Arun Sharma, who is the husband of the judgment debtor i.e., Respondent No.2. Late Mr. Arun Sharma executed a Will in favour of the Appellants dated 20th January, 2018, by which property No. 21, gali number 11, Block A2, West Sant Nagar Burari, Delhi – 110084 was given to them and the judgment debtor i.e., their mother, was excluded from ownership of the same. Therefore, it is the contention of the Appellants that their mother does not have any right in the two shops on the above-mentioned property which have been attached by the Executing Court vide order dated 7th July, 2017.

5. The Executing Court, however, vide the impugned order dated 4th March, 2021, dismissed the Appellants' objections and held that the shops belonging to the husband of the Judgment Debtor, would have, in effect, been succeeded to by the Judgment Debtor and the Will, which excludes the Judgment Debtor, merely seeks to defeat the execution of the decree which was passed. The reasoning given by the Executing Court is set out below:

> *"Heard on the objections.*
> *It is the admitted position that the WILL dated 20.01.2018 made by the objector was made after the passing of the decree in the present case. The objector was the husband of the JD. In the WILL itself it is stated that on 13.12.2017 i.e. about a month before the date of the WILL the objector suffered a heart attack and 90% of his arteries were blocked. It appears that the objector was apprehensive about his health and his life.*
> *Had the objector died intestate, the JD being the widow of the objector would have got one fourth share in the estate of the objector (since the objector has three children and the JD his wife).*

> *In view of the above, there is every reason for the court to believe that the WILL dated 20.01.2018 excluded the JD from the legatees to defeat the execution of the present decree.*
> *In view of the above the objections were dismissed.*
> *Ld. Counsel for the DH seeks time to submit regarding the further course of action for realization of the decreetal amount.*
> *Put up on 22.04.2021 for further proceedings."*

6. Mr. Tikania, ld. counsel appearing for the Appellants has vehemently argued and has submitted that the shops did not belong to the Judgment Debtor at all and therefore, she had no right in the shops which have been attached. He further submits that the Will dated 20th January, 2018 has exclusively vested the property in favour of the Appellants/objectors and therefore the dismissal of their objections is not tenable and is liable to be interfered with.

7. The Supreme Court has repeatedly highlighted the difficulties which Decree Holders face in getting the decree executed. Recently, the Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi & Ors [CA Nos 1659-1660 of 2021, decided on 22nd April, 2021]*** has observed:

> *"25. ………Experience has shown that various objections are filed before the Executing Court and the decree holder is deprived of the fruits of the litigation and the judgment debtor, in abuse of process of law, is allowed to benefit from the subject matter which he is otherwise not entitled to…"*

8. The decree in this case was passed on 24th May, 2016. More than five years have passed and till date, the Decree Holder does not appear to have been able to recover any amount. Ld. Counsel for the Appellants was given an option to deposit Rs.12 lakhs as a pre-condition for entertaining the

objections. However, ld. counsel has submitted that the Appellants do not have the capacity to make a deposit of such amount.

9. A perusal of Order 21 Rules 97 and 98 CPC clearly shows that if there is any attempt to resist or obstruct obtaining of possession by the Decree Holder or if the Judgment Debtor has, in fact, created rights in favour of any party only to defeat the decree, then such an objection would not be liable to be entertained. In the present case, the taking of the loan by the mother of the Petitioners is not being denied. There is no appeal against the judgment/decree dated 24th May, 2016. What is sought to be done in the execution proceedings is merely an attempt to defeat the decree, initially by the husband of the Judgment Debtor and thereafter, by her children. Clearly, if the husband had not executed a Will, the Judgment Debtor would have had a share in the property.

10. Under such circumstances, the entire attempt is definitely to defeat the decree and cannot be acceded to by this Court. This Court does not find any merit in the Appellant's submissions. The appeal is dismissed. All pending applications are also disposed of.

11. If, however, the Appellants wish to press their objections, they are given the option of depositing a sum of Rs. 12 lakhs, subject to which the objections would then be heard on merits by the Executing court.

PRATHIBA M. SINGH
JUDGE

AUGUST 4, 2021
mw/T
(corrected & released on 9th August, 2021)