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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM (M) 553/2022 & CM APPL. 26986/2022, CM APPL.
26987/2022

JASWANT SINGH Petitioner
Through: Mr. N.S. Dalal Mr. Alok Kumar
and Ms Rachna Dalal, Advs.

versus

SMT. KOMAL BANSAL THROUGH HER ATTORNEY
SHRI RAM KUMAR BANSAL & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)
01.06.2022

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1. Suit No. 128/2007 (*Komal Bansal v. Sampuran Singh*) was filed by Respondent 1 against Respondent 2 i.e. Sampuran Singh, the defendant in the suit, seeking possession of a property situated at Khasra No. 60/18, Naresh Park Extn., Nangloi, Delhi-110041 (“the suit property”), and for damages, *mesne* profits, mandatory injunction and from creating any third party rights in respect of the suit property.

2. The Respondent 1, as the plaintiff in the suit, claimed to be the owner of the suit property, having purchased the suit property under two Sale Deeds dated 31st May, 1999. Inasmuch the suit stood decreed and the order was filed in the execution proceedings initiated by the Respondent 1 seeking execution of the decree, it is not



necessary to enter into the rival contentions urged before the Court during the trial of the suit. Suffice it to state that, *vide* para 17 of the judgment dated 12th December, 2011, passed by the learned Commercial Civil Judge, CS 128/2007 was decreed in the following terms:

“17. For the discussion afore-stated, the suit of the plaintiff is decreed with costs. The defendant is directed to vacate and handover the vacant possession of the portion of property no. 60/18A, Naresh Park Extension, Nangloi, New Delhi to the plaintiff. The suit is also decreed for a sum of Rs. 1,60,000/- in favour of the plaintiff and against the defendant. The suit is also decreed for permanent injunction thereby restraining the defendant from parting with and transferring the suit property to anyone else. Decree sheet be prepared accordingly.”

3. Ex. 96279/2016 was filed by Respondent 1, seeking execution of the aforesaid judgment dated 12th December 2011.

4. In the said Execution Petition, the petitioner preferred objections. The petitioner contended, in his objections, that the suit property belonged to the petitioner. It was contended that one Ram Kumar Bansal, claiming himself to be the Attorney Holder of Sushila Gupta, the original owner of the suit property, had committed a fraud, resulting in institution of an FIR by Sushila Gupta, in which Respondent 1 i.e. Komal Bansal was also arrayed as an accused.

5. The proceedings were, thereafter, stated to have been compromised by way of two compromises, one between Sushila Gupta and Respondent 1 and second between Respondent 1 and the petitioner, of which the latter was executed on 8th August, 2007.



According to the terms of compromise, Respondent 1 was to obtain the original Sale Deed and hand it over to the petitioner. According to the petitioner, Respondent 1 agreed, in the compromise, to treat all previous Sale Deeds in her favour as cancelled, in lieu of which the petitioner paid ₹ 25 lacs as compensation to Respondent 1 and other parties. It was further averred by the petitioner that Sushila Gupta had also executed other documents; such as Agreement to Sell and General Power of Attorney, in favour of the petitioner. The petitioner further alleged that the documents, on the basis of which Respondent 1 was claiming title, were sent to the Central Forensic Science Laboratory (CFSL) for examination, and were found to be forged, as a result of which the attempt of Respondent 1 to have the criminal proceedings against her quashed by this Court, did not succeed.

6. In view of the compromise dated 8th August, 2007, executed between Respondent 1 and the petitioner, it was alleged that the Respondent 1 had forgone all right to continue with Suit No. 128/2007, initiated by her. Resultantly, it was alleged that the decree passed in the said suit was unexecutable. The petitioner asserted that he had an independent right over the suit property, in exercise of which he had sold a part of the suit property to one Rekha and Ritu Garg, who had further sold it to one Ranbir Yadav. The petitioner submitted, therefore, that the decree dated 12th December, 2011, could not be validly executed against the petitioner.

7. Respondent 1 filed a reply to the objections of the petitioner, in which she contended that she was the lawful owner of the suit



property under a Sale Deed dated 31st May, 1999. She alleged that Sampuran Singh, the defendant in Suit 128/2007 instituted by her, had been allowed to stay in the suit property to look after the dairy which was being run by her father-in-law, but that, as he refused to vacate the suit property, she was constrained to file Suit 128/2007. The decree passed in the suit, she pointed out, upheld her lawful right as the owner of the suit property. She also alleged the documents, filed by the petitioner, on the basis of which the petitioner claimed title over the suit property, to be illegal and fabricated, and asserted that she had purchased the suit property from Anjana Devi and Sushila Gupta, *vide* two Sale Deeds dated 31st May, 1999. In any event, Respondent 1 submitted that the Executing Court could not go behind the decree. The payment of ₹ 25 lacs, made by her to the petitioner was stated to have been paid to compensate the petitioner for the harassment which he had undergone as a result of the lodging of the FIR.

8. Rules 97, 98 and 101 of Order XXI of the Code of Civil Procedure, 1908 (CPC), which deal with the restriction and obstruction to possession of immovable property, during the course of execution of any decree passed in respect thereof, and the procedure to be followed in the event of such restriction or obstruction, read thus:

“97. Resistance or obstruction to possession of immovable property.—(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.



(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

98. Orders after adjudication.—(1) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),—

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

101. Question to be determined.—All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

9. The learned Civil Judge, adjudicating the aforesaid objections filed by the petitioner in Ex. 96279/16 has gone, in detail, into the provisions of Rules 97, 98 and 101 of Order XXI of the CPC. She has correctly observed that, to the execution of a decree relating to



immovable property under Order XXI Rule 97 of the CPC, have to be adjudicated under Order XXI Rule 97(2) read with Order XXI Rule 101 of the CPC, of which the later provision required the Executing Court to decide all questions including question relating to right, title or interest in the property arising between the parties to the proceedings, without relegating them to a separate suit. She has placed extensive reliance on the judgment of the Supreme Court in *Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*¹ and *Ashan Devi v. Phulwasi Devi*², observing that the Supreme Court had, in the said decisions, clearly explain the scope and ambit of the scheme contained in the Rules 97 and 101 of Order XXI of the CPC.

10. The learned Civil Judge has, thereafter, concluded thus:

“11. In the judgment based on which the decree in question has been passed it has been stated by the defendant who is the JD herein that the defendant was a tenant in respect of an area of about 2000 sq.yds. No evidence was led on behalf of the defendant and no one appeared on behalf of the defendant for addressing the final arguments. The objectors have raised serious issue as to the validity of the decree itself in as much as it was a fraud played upon the court and that the same was a result of a collusion between the decree holder and the judgement debtor herein. It is a settled principle of law that a fraud played upon a court, as and when and after how so many years being discovered, the courts cannot act like a silent spectator and take a simple recourse to the principle that the executing court cannot go behind the decree. The objectors have filed various documents including the copy of FIR, compromise deed, demand drafts, copy of GPA, agreement to sell etc., photographs showing the possession by the objector, copy of electricity bill in the name of the objector, copy of sale deed dated 17.01.1985 executed in favour of previous

¹ (1997) 3 SCC 694

² (2003) 12 SCC 219



owner i.e. Smt. Sushila Gupta and Smt. Anjana Devi and various other documents to show their occupation / ownership in the suit property. The sale deeds dated 17.01.1985 has not been denied by the Decree Holder. Further, in the bailiff's report dated 03.03.2015 it has been stated that at the time when the bailiff went for the execution of the decree in question the property in question was found to be different from the site plan. A two storey building had been constructed on the property. Also, in the front side of the property a green drum factory was located and some of the portion was covered under tin shed. Further, a two storey house was constructed in the back portion and a boundary wall was constructed along with the gate. The factory and the house was occupied by some persons who stated themselves to be the tenants of Ranbir Yadav (objector herein).

In the considered opinion of this court, the objectors have raised substantial point of facts as well as law which deserves to be dealt with by affording an opportunity to the objectors to lead evidence and prove their point to the effect that:

- a) whether the objector Jaswant Singh purchased the property from Smt. Sushila Gupta and is the owner of the suit property? (OPO)
- b) whether Smt. Anjana Devi had sold the property to Smt. Sushila Gupta?(OPO)
- c) Whether a fraud was committed by DH in obtaining the decree in question? (OPO)”

11. The learned Civil Judge has, following the above, fixed the matter for filing of the evidence by the objector and, in the interregnum, stayed the proceedings in the execution petition.

12. Somewhat disconcertingly, it is the objector who, as the present petitioner, has sought to challenge the impugned order dated 21st February, 2022. At a plain glance, it is difficult to understand what



grievances the objector could have against the impugned order, which accepts all the objector's submissions and frames questions on the basis of which to take a final decision on the objections and has also stayed the proceedings in the execution petition.

13. That, however, does not appear to satisfy the objector. The present petition, at the objector's instance, prays thus:

“Therefore, on the facts and in the circumstances of the case, it is most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to:-

(i) call for the record of Execution Application No.96279 of 2016, titled as *"Komal Bansal through her Attorney Holder Shri Ram Kumar Vs. Sampuran Singh"* pending in the Court of Ms. Deeksha Rao, Ld. Civil Judge-04, Tis Hazari Courts, Delhi;

(ii) Set aside the order dated 21.02.2022 passed by the Ld. Civil Judge, Tis Hazari Courts in Execution Application No.96279 of 2016, titled as *"Komal Bansal through her Attorney Holder Shri Ram Kumar Vs. Sampuran Singh"*;

(iii) Dismiss the Execution Application No.96279 of 2016, titled as *"Komal Bansal through her Attorney Holder Shri Ram Kumar Vs. Sampuran Singh"* pending in the Court of Ms. Deeksha Rao, Civil Judge-04, Tis Hazari Courts, Delhi;

(iv) Direct the Initiation of perjury proceedings against the Respondent No.1/Decree Holder for commission of the Act of perjury, abuse and misuse of the process of law and playing fraud with the Hon'ble Court in view of the law laid down by this Hon'ble Court in R.F.A. No.784 of 2010 titled as *"H.S. Bedi Vs. National Highway Authority of India"*;



(v) award costs of the present Petition in favour of the Petitioner and against the Respondents;

(vi) Pass any such other or further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case, in favour of the Petitioner and against the Respondents.”

14. In para 29 of the present petition, the petitioner (objector before the Civil Judge) has precisely set out his grievance thus:

“The Petitioner is aggrieved by the order dated 21.02.2022 vide which the Court has fixed the case for evidence instead of allowing the objections and ordering dismissal of the execution proceedings against the Petitioner and initiation of proceedings against the alleged Decree Holder, in view of the submissions narrated before the Ld. Trial Court and hereinabove.”

15. Mr. Dalal, appearing for the petitioner-objector has sought to advance the contention that the learned Civil Judge could not have followed the course of action that she chose to follow, by framing issues on the basis of the objections raised by the petitioner and setting the matter down for recording of evidence. Mr. Dalal’s contention is that the documents placed on record by his client were self-evident and that, therefore, there was no requirement or even necessity of framing any issues or setting the matter down for evidence. He submits that the learned Civil Judge could straightaway have allowed the objections and dismissed the execution petition. Mr. Dalal sought to contend that Respondent 1 had approached the Court with unclean hands, there could be no question of her being entitled to execution of decree in her favour, based on the material placed on record by the



petitioner and there, therefore, the learned Civil Judge has gravely erred in framing the issues and setting the matter down for evidence.

16. A holistic appreciation of Rules 97 to 101 of Order XXI of the CPC, read with the judgment of the Supreme Court in ***Brahmdeo Chaudhary***¹ reveals that the Executing Court is required to adjudicate on the objections put up by the objector to the execution of the decree, without relegating the parties to a suit. There is no statutory or precedential proscription on the Executing Court proceeding to do so by framing issues and seeking evidence from the parties, especially where the objections raised to execution of the award raised disputed factual issues. In the present case, the petitioner and Respondent 1 both claim ownership of the suit property, under different documents. It would obviously be preposterous to hold—as the petitioner appears to seek—that the learned Senior Civil Judge ought to have straightaway accepted objections of the petitioner and dismissed the execution proceedings without any further inquiry and without framing any issues. The contentions of fact raised by parties in a litigation cannot be treated as gospel truth, unless they are tried and tested in a manner known to law. Where these issues are raised in objections filed against execution of a judicial order or decree, the procedure to be followed in that regard would be within the discretion of the Court deciding the objections.

17. Indeed, the impugned order reveals that the learned Executing Court has accepted nearly all the contentions of the petitioner, raised in order to justify the petitioner's right to object against the execution



of Judgment and Decree dated 12th December, 2011, passed in favour of Respondent 1. Having done so, the learned Civil Judge has framed the necessary issues, which would require to be decided, as there were disputed questions of fact involved. The procedure followed by the learned Civil Judge is wholesome and does not infract any statutory edict.

18. There, in fact, appears to be no rational justification for the petitioner burdening this Court with by the present petition, save and except a reluctance to have the correctness of the objections raised by him, adjudicated and decided in a manner known to law. The insistence of the petitioner, in the present petition (made explicit in para 29 thereof) that the petitioner's objections should straightaway be accepted and the Execution Petition of Respondent 1 dismissed, effectively consigns to oblivion the most elementary principles of natural justice and fair play.

19. If the procedure being followed by the learned Civil Judge was unknown to law, or violated any statutory prescription or proscription, a case for interference made of existent. That, Mr. Dalal acknowledges, is not the case.

20. For the aforesaid reasons, this Court is of the view that the present petition is completely misconceived and has needlessly taken up Court time.

21. The petition is dismissed with costs of ₹ 15,000/- to be paid by



the petitioner by way of a cross cheque favouring the Delhi High Court Staff Welfare Fund, to be deposited with the Registry of this Court within a period of six weeks from today. Miscellaneous applications also stand disposed of.

C. HARI SHANKAR, J

JUNE 1, 2022

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