



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

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Order reserved on: 19.07.2022

Order pronounced on: 25.07.2022

+ EX.F.A. 13/2022 & CM APPL. 31387/2022 (for Stay)

PREETI CHAWLA

..... Appellant

Through: Mr.Manish Vashisht, Sr. Adv. with
Mr.Akshay Bhatia, Mr.Sudeep Singh
and Ms.Shreya Gupta, Advs.

versus

DR. AKSHAY MEHRA & ORS.

..... Respondents

Through: Mr. T. K. Ganju and Mr.Vikas
Dhawan, Sr. Advs. with Mr.Aquib
Ali, Ms.Anupriya Nigam,
Ms.Rajeshwari, Mr.Kaushal Dogra
and Mr.Anish Lakhanpal, Advs. for
respondents.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER

1. This Execution First Appeal assails an order of 06 July 2022 passed by the Executing Court rejecting the objections preferred by the appellant under Order XXI Rule 97 of the Code of Civil Procedure, 1908 [“the Code”]. The dispute emanates from a decree passed by the competent court on 10 February 2021 in C.S. No.811/2019 for recovery of possession of a farmhouse bearing No.22, Road No.1, Silver Oak Farm Houses, Ghitroni, New Delhi, forming part of Khasra No.466,493,506/2,533/1 and 533/2.

2. The appeal filed by the judgment debtor against the aforesaid decree came to be dismissed by this Court on 07 October 2021. Warrants of
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possession are stated to have been issued in the interregnum on 24 September 2021. Pursuant to the said warrants coming to be issued, the bailiff appointed by the Court is stated to have visited the suit property on 08 October 2021. The handing over of possession was resisted by the appellant and others who were present on the suit property. The evidence to that effect was also placed before the Executing Court. In the execution proceedings which were initiated and were numbered as Ex. No.131/2021, the appellant filed her objections on 26 October 2021. In those objections which were asserted to be referable to Order XXI Rules 97, 99 and 101 of the Code, the appellant laid a claim upon the suit property based on a Will dated 06 August 2018 stated to have been executed by the father of the decree holders in her favour. It was the case of the appellant that in terms of that Will executed by the father of the decree holders, the entire suit property had been bequeathed to her.

3. The decree holders controverted the aforesaid and challenged the authenticity of the Will as well as the case set forth by the appellant here. One of the objections which was taken was that their father could not have bequeathed more than fifty per cent of the suit property since the other half fell in the share of a HUF. It was additionally contended that the suit property had been originally leased out to M/s Anjor Agro Pvt. Ltd. on 29 May 2011. It is also their case that Anjor Pvt. Ltd. vacated the suit property consequent to orders passed upon an eviction suit on 15 February 2018. It was further asserted that it was the judgment debtor who was thereafter inducted and continued to remain in possession of the suit property till its lease was terminated on 15 October 2019. The decree holders further assert



that all correspondence relating to the suit property was exchanged between them and the judgment debtor and that the appellant never asserted or claimed any right, title or interest in the suit property till the filing of her objections on 26 October 2021.

4. On 09 December 2021, the appellant filed a rejoinder affidavit in the execution proceedings. The additional documents on which the entire dispute revolves are stated to have been filed around the same time. They were tendered along with an index which bears the signature of the lawyer of the appellant. It admittedly formed part of the court record. The index to the additional documents refers to a Will of 05 August 2018 stated to have been executed by the father of the decree holders in favor of the appellant. However, the copy of the Will enclosed therewith and placed on the record bears the date of 05 October 2018. When the objections were taken up for consideration by the Executing Court, this evident and apparent discrepancy in the stand taken by the appellant was highlighted and brought to the fore by the decree holders. It was pointed out that the original objections were based on a Will allegedly executed in favor of the appellant on 06 August 2018. The decree holders pointed out that subsequently the appellant has rested her case on a Will dated 05 October 2018. The Executing Court was also apprised of the evident deviations and contradictions in the Wills of 06 August 2018 and 05 October 2018. The decree holders point out that while in terms of the former Will the appellant is stated to have been bequeathed the suit property in its entirety, the latter purports to confer rights on the appellant to the extent of half acre of the suit property. These apparent inconsistencies and distinctions in the two Wills have been duly highlighted



by the Executing Court in the shape of a tabulated statement which forms part of the order impugned. In response to the aforesaid contentions, the appellant disowned the filling of the additional documents and the Will dated 05 October 2018 appended thereto. The appellant also asserts to have filed a police complaint in respect of the aforesaid issue on 09 May 2022. It is the case of the appellant that the additional documents which were relied upon by the Executing Court were never filed by her. It is further contended that even the lawyer of the appellant in the written submissions had clearly asserted that those were never tendered and that the additional documents were an outcome of forgery and manipulation of court records.

5. For the completeness of the record, it may be further noted that subsequently and on 23 May 2022, the appellant also instituted an independent suit being C.S. No. 321/2022 in which interim injunction was granted protecting her from being dispossessed. The aforesaid order was assailed by the decree holders by instituting FAO No.177/2022 on which the Division Bench of this Court on 06 July 2022 clarified that the appellant would not be dispossessed except in accordance with law. On the same date, the objections filed by the appellant also came to be rejected by the Executing Court.

6. Mr. Vashisht, learned Senior Counsel appearing for the appellant, vehemently contended that in the face of the appellant having denied filling the additional documents and the Will of 05 October 2018, it was incumbent upon the Executing Court to initiate an appropriate enquiry rather than holding that the appellant had forged or fabricated records. Mr.



Vashisht drew the attention of the Court to the written submissions which were filed and contended that the lawyer of the appellant had in unequivocal terms denied having filed the additional documents and placing a Will of 05 October 2018 on the record. It was the submission of Mr. Vashisht that it would be wholly implausible for the appellant to have placed the Will of 05 October 2018 on the record since that purported disposition had reduced the extent of the rights claimed by her over the suit property. Mr. Vashisht submitted that it was clearly unimaginable that the appellant would have resorted to any action in terms of which her case resting on the Will of 06 August 2018 would stand diminished.

7. Controverting the aforesaid submissions, Mr. Ganju and Mr. Dhawan, learned Senior Counsels appearing for the decree holders submitted that the lawyer of the appellant never filed any affidavit denying the tendering of the additional documents nor did he place any denial on oath. Learned Senior Counsels contend that the order sheet as maintained by the Court clearly records and bears out the filing of the rejoinder affidavit as well as the additional documents. In view of the above, it was contended that it does not lie in the mouth of the appellant to disown the Will of 05 October 2018 or to claim that the said document was never tendered or filed in the proceedings in question. The falsity of the claim set up by the appellant was further sought to be highlighted based on the fact that photographs which formed part of the additional documents which had been filed on 09 December 2021 were also appended along with the written submissions tendered by the lawyer of the appellant before the Executing Court.



8. Learned Senior Counsels placed reliance upon the recent decision rendered by the Supreme Court in **Rahul S. Shah v. Jinendra Kumar Gandhi**, [(2021) 6 SCC 418] to submit that the directions issued and carried in that decision obligated the Executing Court to reject objections which may be found to be wholly frivolous or malafide. Tracing the entire conduct of the appellant coupled with an evident failure on her part to have asserted an interest in that property prior to the filing of the objections in execution proceedings, learned Senior Counsels would contend that the order passed by the Executing Court would merit no interference.

9. Having considered the rival submissions, the Court notes that the Executing Court has rightly found that while it is permissible for a third party to file objections referable to Order XXI Rule 97, those objections must be based on valid and cogent material. This bearing in mind the fact that the said rule uses the expression “*any person*” and thus enabling a person who may otherwise have not been a party to the suit proceedings to also apply for the settlement of its rights. However, as has been consistently held, it is only when the objections are found to be of some substance that the Executing Court would be obliged to try the same. Objections which lack credibility or fail to raise triable issues are liable to be outrightly rejected. The Executing Court has in the considered opinion of this Court also rightly observed that it is not mandatorily required to frame issues, record evidence or hold a full-fledged trial in respect of an objection which may come to be tendered by a third party. It has in this context correctly noted that objections which are either mala fide, frivolous or an abuse of process in the sense of having been filed only to delay the execution



proceedings are liable to be dismissed summarily without the Executing Court conducting a lengthy trial in respect of the same.

10. While evaluating the objections which were tendered by the appellant, the Executing Court has noted the apparent inconsistencies between the Wills of 06 August 2018 and 05 October 2018. It has taken note of the fact that the additional documents had been tendered and filed in Court under the signatures of the lawyer appointed by the appellant. It has further noted that those documents formed part of the Court record. It has also doubted the bona fides and the veracity of the stand taken by the appellant by noting that the original Will of 06 August 2018 was the only testamentary instrument on the basis of which the appellant had rested her objections initially. Turning its gaze to the Will of 05 October 2018, it noted that it did not even bear the signatures of witnesses. It was in that backdrop and the inconsistent stand taken by the appellant that the Executing Court observed that the appellant had indulged in fabrication of documents and had filed false and fabricated Wills before the Court.

11. The conclusion so arrived at by the Executing Court merits no interference for the following reasons. It must, at the outset, be noted that Court records are conferred a degree of sanctity. An assertion that records have been tampered with is a serious charge which must necessarily be proved with the aid of cogent material and evidence. The Court notes that undisputedly the additional documents form part of the records of the Executing Court. They are stated to have been filed under the signature of the lawyer appointed by the appellant. Neither the appellant nor her lawyer



has been able to establish that the order sheet as drawn by the Court on 09 December 2021 was either incorrect or inaccurate. It is also not the case of the appellant that those documents came to be entered and form part of the court record without due process having been followed. In the considered opinion of this Court, if the appellant were in fact serious in respect of the allegation that was levelled, the first and foremost obligation that consequently stood placed was for her as well as her lawyer to seek rectification of the minutes and the records of the Court. It becomes pertinent to note that neither the appellant nor her lawyer had submitted any affidavit or statement on oath in support of their assertion that the additional documents had not been tendered or filed. The allegation was clearly grave and cast an aspersion on the solemnity which stands attached to judicial records. That allegation could not have been left to rest on a mere assertion in the written submissions which were filed. No court of law would be justified in countenancing such an alarming allegation based on mere submissions that may be chosen to be submitted by parties. If such unsubstantiated allegations were to be taken cognizance of, it would throw our judicial system itself into disarray.

12. The Court also bears in consideration the fact that the lawyer of the appellant sought to disown the Will of 05 October 2018 only at the stage of the filling of the written submissions. Curiously and yet of paramount significance is the undisputed fact that the written submissions enclosed photographs identical to those which were appended to the additional documents which were filed. The appellant has offered no explanation for this coincidental fact. This facet has also been taken note of by the

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Executing Court. The Court also bears in mind that the second will of 05 October 2018 came to be filed after the decree holders had asserted that half portion of the suit property fell in the share of a HUF and that the testator, thus, had no right to bequeath the entire property to the appellant here.

13. Regard must also be had to the fact that execution proceedings, as is well-known, are sought to be inordinately delayed and stalled with unscrupulous litigants resorting to ingenious steps. It is this sorry aspect of civil litigation which constrained the Supreme Court to invoke its powers conferred by Article 142 of the Constitution to frame the following directions in **Rahul S. Shah: -**

“41. Having regard to the above background, wherein there is urgent need to reduce delays in the execution proceedings we deem it appropriate to issue few directions to do complete justice. These directions are in exercise of our jurisdiction under Article 142 read with Article 141 and Article 144 of the Constitution of India in larger public interest to subserve the process of justice so as to bring to an end the unnecessary ordeal of litigation faced by parties awaiting fruits of decree and in larger perspective affecting the faith of the litigants in the process of law.

42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may



appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious



method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "... in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."

14. This Court is of the considered view that the Executing Court has rightly come to the conclusion that the objections raised were not only frivolous and lacking in substance but were based on the production of false and fabricated documents. The facts as have come to be noticed by the Executing Court, thus compels the Court to record its conclusion that the



resistance to the decree was based on a claim which was wholly frivolous and mala fide.

15. Accordingly, and for all the aforesaid reasons, the present appeal shall stand dismissed.

JULY 25, 2022

Neha

YASHWANT VARMA, J.

