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

% *Date of Decision: 25th May, 2023*

+ C.R.P. 26/2021

SHRI ASHOK OHRI AND ANOTHER Petitioners

Through: Mr. M. Dutta, Mr. Ved Prakash
Gulati and Mr. Aditya Guha, Advocates.

versus

THE DELHI DEVELOPMENT
AUTHORITY AND OTHERS

..... Respondents

Through: Ms. Garima Prashad, Senior
Advocate with Mr. Anish Dhingra, Panel
Counsel with Mr. Nakul Ahuja and Mr. R.
Sriram, Advocates for DDA.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This revision petition is directed against an order dated 07.12.2020 passed by the learned Executing Court in Execution Case No.62807/2016. Petitioners herein were Applicants before the Executing Court being the subsequent purchasers of the suit property from the original Decree Holder and Respondent No.1/Delhi Development Authority was the Judgment Debtor.

2. The case has a chequered history with a whole web of facts interlinked with each other. Joginder Kumar filed a suit for permanent injunction being Suit No.203/1989 titled '*Joginder Kumar v. Yudhvira Khanna and Others*', in respect of Plot No.WZ-4 out of Khasra No.2364, behind Tea Stall, Manoj Dhaba, Main Road, Saraswati Garden, New Delhi (hereinafter referred to as the 'suit property'). An interim injunction was granted vide order dated 12.09.1989, whereby

Defendants therein were directed not to dispossess Joginder Kumar, the Plaintiff.

3. During the pendency of the suit, another suit for declaration and injunction was instituted by Joginder Kumar with respect to the same suit property being CS No.257/1989 (old number) on 13.12.1989. The suit was decreed under Order VIII Rule 10 CPC on 01.12.1990 in favour of Joginder, as DDA and other Defendants had failed to file written statements. Execution Petition bearing No. 42/1990 was filed by Joginder and directions were issued by the Executing Court to DDA to remove the barbed wire from the suit property as well as the Board of the DDA with further directions not to interfere in peaceful enjoyment and possession of the suit property by Joginder. In appeal bearing RCA No. 53/1990, decree was set aside by the First Appellate Court vide judgment dated 27.01.1993 and the suit filed by Joginder was dismissed. Regular Second Appeal was filed before this Court bearing RSA No.33/1993. DDA contested the appeal on the ground that the suit property falls in Khasra No.2364/1, whereas Joginder in the garb of the suit property was actually encroaching upon land falling in Khasra No.3550/2365, which was covered under acquisition Award No.5/70-71, pursuant to which possession vested with DDA.

4. On 24.01.2000, this Court disposed of the RSA with direction to the Trial Court to give opportunity to DDA to file written statement and dispose of the suit on or before 31.12.2000. DDA, however, chose not to contest the suit and did not participate again. Finally, the Trial Court decreed the suit partially in favour of Joginder and an injunction decree was passed on 23.12.2000, however, relief seeking declaration of ownership of the suit property was denied.

5. Post the passing of the decree, Joginder assigned/transferred all his rights, title and interest in the suit property to Sh. Ashok Kumar Ohri and Sh. Ved Prakash Gulati by executing a Sale Deed dated

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01.06.2007, the Petitioners herein. Petitioners filed a Contempt Petition on 12.12.2008 being Cont. Cas(C) 462/2008, which was dismissed as not pressed on 18.02.2011. Thereafter, Petitioners sought execution of the decree by filing Execution Petition bearing No.119/2009 on 03.06.2009, which was subsequently registered as Execution No.80/2011 (re-numbered 22807/2016), on being transferred. This execution was filed aggrieved by the barbed wiring affixed around their plot by DDA along with a Board of the DDA indicating the suit property as 'DDA land'. Petitioners sought restoration of ownership and possession over the suit property as well as a restraint against DDA from interfering with their ownership and possession. An application was also filed under Section 151 CPC dated 24.03.2010 for removal of the Board reading DDA land as well as the fencing/boundary wall from the plot and relief of restoration of possessory title of the plot was also sought. Subsequently, another application dated 29.07.2010 was filed seeking leave of the Court to continue prosecuting the Execution Petition on the ground that Petitioners were subsequent purchasers of the suit property from the original Decree Holder i.e. Joginder and had stepped into his shoes.

6. DDA filed objections to the execution on two-fold grounds: (i) locus/right of the Petitioners to prosecute the application under Order XXI Rule 32 CPC for execution of decree dated 23.12.2000 passed in suit No. 727/2000; and (ii) there are serious disputes with regard to identity of the suit property inasmuch as DDA had fenced Khasra No.3551/2365 and not the suit property and the Aks Shajra showed that the two Khasras and the suit property are distinct.

7. Petitioners filed response to the objections and submitted that the objections were identical to the affidavit in RSA No.33/1993 filed in this Court, based on which this Court had vide judgment dated 24.01.2000 permitted DDA to contest the suit before the Trial Court.

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DDA, however, chose not to contest the suit and finally a decree was passed on 23.12.2000. It was also submitted that DDA attempted to impugn the identity, location, number of suit property, etc. which was impermissible at the stage of execution. It was also urged that the Executing Court has no jurisdiction to sit in appeal over the judgment rendered by a Court.

8. By an order dated 29.01.2015, Court appointed a Local Commissioner to visit the site and give a report on the surroundings of the suit property after taking photographs of the same from all angles and also to report whether the suit property had fencing and the DDA Board as well as whether it was surrounded by a *nala*. An application was filed by the Petitioners on 03.02.2015 with a prayer that the Local Commissioner should not be permitted to make the inquiry as directed since the Executing Court cannot travel behind the decree. On 04.02.2015, the application was dismissed and the Appeal being MCA No. 3/2015 was also dismissed followed by filing of a petition being CM(M) 675/2015 before this Court. Petition was disposed of by this Court on 22.08.2016 modifying the order dated 29.01.2015 to a certain extent but upholding the direction of appointing Local Commissioner to visit the site and give a report on the suit property. SLP(C) No.34644/2016 against the said order was dismissed on 05.12.2016.

9. Another application dated 26.02.2018 was moved by the Petitioners praying for recalling of the orders appointing the Local Commissioner and adjudicating the Execution Petition without any further inquiry. By the impugned order dated 07.12.2020, the Executing Court has dismissed the Execution Petition filed by the Petitioners for execution of the decree of permanent injunction on the ground that a subsequent purchaser cannot step into the shoes of the original Decree Holder as injunction does not run with land and the

Petitioners are at liberty to file a fresh suit on the same cause of action, before the appropriate forum, in accordance with law and subject to limitation.

10. Laying a siege to the impugned order, counsel for Petitioners submitted that the Trial Court had passed an order of injunction in favour of Joginder/original owner of the suit property, who subsequently sold the same to the Petitioners by a Sale Deed dated 01.06.2007, under which all rights of ownership, title and interests were also sold and conveyed to the Petitioners and thus they have complete, absolute and full rights of ownership over the subject plot. Resultantly, Petitioners are entitled to proceed under Section 146 and Order XXI Rules 16 and 32 CPC read with Section 52 of the Transfer of Property Act, 1882. It is a settled law that rights of a Decree Holder are heritable and alienable as well as transferable and do not extinguish with the death of the beneficiary. Reliance was placed on the judgments in *Muthukaruppa Pillai and Another v. Ganesan, 1995 Supp (3) SCC 69; Prabhakara Adiga v. Gowri and Others, (2017) 4 SCC 97; and Speedline Agencies v. T. Stanes and Company Limited, (2010) 6 SCC 257*. The maxim *actio personalis moritur cum persona* in latin, which means personal action dies with the person, will be inapplicable to the present case.

11. It was contended that the orders dated 16.01.2015, 29.01.2015 and 04.02.2015 relating to appointment of a local commissioner were a nullity and ought to have been recalled under the inherent powers of the Court as the direction appointing a Local Commissioner to inspect the site would amount to re-opening the decree, which the Executing Court cannot do. Civil Suit No.257/1989 was decreed in favour of Joginder as no written statement was filed by DDA and there was no contest to his claims. This Court in a Second Appeal allowed DDA to file its defence and contest the suit, however, DDA again chose not to

defend the suit and no written statement was filed. Having failed to oppose the claim of the original owner Joginder, for the first time in the execution proceedings DDA raised a false and frivolous claim that the suit property belonged to DDA. Executing Court erred in appreciating that for the first time DDA was trying to plead and set up before the Executing Court a case which was never brought before the Trial Court in the original suit and thus what it did not do directly, it cannot be permitted to do indirectly. In any event, Executing Court cannot travel beyond the decree as the scope of its powers are confined. Executing Court can only execute a decree as it exists and the decree having attained finality, the Executing Court had no option but to execute the decree, without entering into its merits.

12. Arguing on behalf of the Respondent/DDA, learned counsel submits that Petitioners are subsequent purchasers of the suit property and have no locus to prosecute the execution petition, as a decree of injunction does not run with the land and is personal to the Decree Holder. The suit was filed by Joginder qua the suit property which was decreed on 23.12.2000, wherein relief of declaration of title was rejected and the only relief granted was injunction from dispossession. Petitioners are subsequent purchasers of the suit property through a Sale Deed. After purchasing the property, Petitioners started frivolous litigation with DDA with the purpose of encroaching upon public property.

13. Contention of DDA was that Petitioners are not Decree Holders but only subsequent purchasers from the Decree Holder and in view of the law laid down in *Somnath Honnappa Bennalkar v. Bhimrao Subrao Patil, 1971 SCC OnLine Kar 240* and *Jamsetji Manekji Kotval v. Haria Daya, (1908) ILR 32 Bom. 181*, decree of permanent injunction does not run with the land and thus only Joginder was entitled to execute the same. The suit property bears plot No.WZ-4,

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Khasra No.2364/1, now numbered as A-45, Saraswati Garden and was never acquired by DDA and DDA has no interest in the same, however, Petitioners are attempting to encroach upon a plot in Khasra No.3551/2365, which DDA contests as it is DDA land, as evident from the survey carried out by Revenue staff of Land Management/ West Zone on 04.09.2021.

14. It was submitted that Petitioners had been deliberately avoiding inspection of the suit property and the DDA land by resisting the appointment of Local Commissioner as that would identify the properties and also show that Petitioners were never in possession of Khasra No.3551/2365. In the absence of identification of the suit property, the Execution petition cannot even otherwise proceed. Trial Court has also rightly dismissed the Execution Petition on the ground that the decree granted in favour of the original owner Joginder was only for permanent injunction as the relief of declaration of ownership was declined. Petitioners claim to be subsequent purchasers from the Decree Holder through a Sale Deed and have no right to seek execution of the decree since a decree of permanent injunction does not run with the land and is a personal one and the Court has granted liberty to file a fresh suit on the same cause of action, in accordance with law.

15. Insofar as the grievance of the Petitioners with respect to recall of the orders for appointment of Local Commissioner and consequent directions is concerned, Court noted that once the Petitioners had unsuccessfully challenged the appointment of Local Commissioner upto the Supreme Court, orders could not be recalled. Court also noted that even on merits, Section 47 CPC empowers the Executing Court to determine all questions relating to the decree with respect to its execution/discharge or satisfaction. DDA had raised a serious objection to the Execution Petition i.e. regarding the identity of the

suit property by referring to Aks Shajra and this adjudication requiring evidence was beyond the powers of the Executing Court.

16. I have heard learned counsels for the parties and examined their respective contentions.

17. Two-fold questions that arise for consideration before this Court are: (a) whether decree of permanent injunction granted by the Trial Court can be executed by the Petitioners, who are subsequent purchasers of the suit land, being a decree in *personam*; and (b) whether the orders passed by the Executing Court, during the pendency of the execution, for appointment of Local Commissioner deserved to be recalled by the Executing Court.

18. Insofar as the Petitioners are concerned, they contend that being subsequent purchasers of the suit property by virtue of a sale deed dated 01.06.2007 all rights of ownership, title and interest were sold and conveyed to them and they are entitled to proceed under Section 146 read with Order XXI Rules 16 and 32 CPC for execution of the decree. DDA, on the other hand, adopts a position that being subsequent purchasers, Petitioners have no locus to execute the decree, as decree of permanent injunction is a decree *in personam* and does not run with the land. Moreover, a subsequent purchaser cannot claim a better title than the decree holder, whose relief for declaration of title and ownership was rejected.

19. The Supreme Court in ***Prabhakara Adiga (supra)*** was dealing with a case where holder of a decree of permanent injunction sought to enforce the decree against the legal heirs of the judgment debtors. Execution was resisted by the legal heirs on the ground that they were not bound by the decree since it was a personal in nature and did not run with the land. Judgment deals with rights of a decree holder for enforcement of a decree of permanent injunction against the legal heirs of the judgment debtor in a case where on the basis of a

registered partition deed the suit property was allotted to the plaintiff and he was in possession. Defendant on partition in his own family was allotted 1.58 acres but he sold 1.68 acres of land. Plaintiff filed a suit seeking permanent injunction with respect to the property described in the plaint, which was in his possession and enjoyment. Defendant made an attempt to remove and destroy the fencing and to forcibly dispossess the Plaintiff. Decree of permanent injunction was passed against the Defendant on the ground that he had no right, title or interest in the disputed land. After suffering the decree, judgment debtor died and his legal heirs tried to forcibly dispossess the decree holder in violation of the decree, which led to the decree holder filing an execution petition. The question before the Supreme Court was whether the decree could be executed against the legal representatives of the Defendant. The Supreme Court held that a decree of injunction cannot be enforced against a subsequent purchaser from a Judgment Debtor, since injunction does not run with the land and is a remedy *in personam*. It was further held that this general rule is saved by Section 50 CPC with respect to legal heirs of the deceased Judgment Debtor and against the purchaser of the suit property *pendent lite* by Section 52 of the Transfer of Property Act. Where the remedy of injunction granted by the decree is in respect of any heritable and partible right, it does not get extinguished by the death of the party thereto but inures to the benefit of the legal heirs of the Decree Holder and can be executed against the successor-in-interest of the deceased Judgment Debtor as well. [Also Ref. ***Ramachandra v. Laxmana Rao, 2000 SCC OnLine Kar 325.***]

20. In ***Girijanandini Devi and Others v. Bijendra Narain Choudhary, (1967) 1 SCR 93***, the Supreme Court held that normally, personal action dies with the person but this principle has application to limited kinds of causes of actions. While considering the question

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whether the decree for accounts can be passed against the estates, the Supreme Court also considered the maxim *actio personalis moritur cum persona* and observed that the postulation that personal action dies with the person has a limited application, such as in an action pertaining to damages, assault, personal injuries etc. where after the death of the party, relief granted cannot be enjoyed or if granted would be nugatory. Therefore, insofar as the legal heirs of the deceased Judgment Debtor are concerned, the decree of permanent injunction was held to be enforceable. From the judgments, it also emerges that the decree of injunction is executable at the instance of the legal heirs of the Decree Holder.

21. The question that arises here is with respect to the rights of the subsequent purchaser to execute a decree of permanent injunction qua a property which he purchased after the passing of the decree. The Supreme Court in *Prabhakara Adiga (supra)* referred to an observation of the Supreme Court in *Girijanandini (supra)* that when the rights litigated upon are heritable, the decree would not normally abate and can be enforced by the legal representatives of the Decree Holder against the Judgment Debtor or his legal representatives, as it would be against the public policy to ask the Decree Holder to litigate once over again against the legal representatives of the Judgment Debtor, when the cause of injunction survives though decree of injunction normally does not run with the land.

22. In *Execution Proceedings*, by Sh. Soonavala, 1958 Edn. on p. 386, it is stated that decree of injunction does not run with the land and cannot be enforced against the purchaser of the property from the Defendant but can be enforced against his legal representatives. Therefore, while law is settled qua the rights of legal heirs, Petitioners were unable to point out any judgement granting similar rights in favour of a purchaser of the suit property from a Decree Holder, to

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prosecute execution of a permanent injunction decree. Respondents, on the other hand, relied on two judgments viz: ***Somnath Honnappa Bennalkar (supra) and Jamsetji Manekji Kotval (supra)*** holding to the contrary, where it was held that an injunction being personal does not run with the land and thus the purchaser cannot step into the shoes of the deceased Decree Holder to execute the decree and the only remedy available to such a purchaser is to file a fresh suit. Trial Court has relied on these judgements and held that Petitioners cannot execute the original Decree and in the absence of any judgement to the contrary this Court is unable to hold in favour of the Petitioners on this aspect.

23. Even assuming for the sake of arguments, that Petitioners can resort to Section 146 CPC and that it cannot be laid down as a general proposition that a permanent injunction decree can be executed by a subsequent purchaser, as urged by them, there is yet another impediment in their way in seeking execution of the decree in the present case, which in my view is really the heart of the dispute. As noted above, the original Decree Holder had filed a suit being Suit No.203/1989, seeking permanent injunction wherein interim injunction was granted on 12.09.1989 directing Defendants not to dispossess the Plaintiff. During the pendency of the suit, another suit for declaration and injunction qua the same suit property was instituted by the Decree Holder being CS No.257/1989 on 13.12.1989. DDA which was the contesting party did not file a written statement and the suit was decreed under Order VIII Rule 10 CPC on 01.12.1990 in favour of the Decree Holder. Execution bearing No.42/1990 was filed, in which directions were issued for removal of the barbed wire from the suit property as well as the Board of DDA with a further direction that there will be no interference in peaceful enjoyment and possession of the suit property.

24. DDA challenged the judgment and decree which was set aside by the First Appellate Court and in Regular Second Appeal before this Court, direction was issued to the Trial Court to give opportunity to the Defendants including DDA to file written statement. It is a matter of record that DDA again did not contest the suit and finally, a decree of injunction was passed on 23.12.2000. At this stage, it is pertinent to mention that the suit was for injunction and declaration of ownership of the suit property but the relief of declaration was rejected. It is important to refer to this part of the judgment of the Trial Court, which is extracted hereunder:-

“9. So, it is quite clear that any person entitled to any legal right or characters, can only be maintained, only if any person against whom he is seeking the relief is denying or interested to deny his right or charter. It is undisputed that the plaintiff has allegedly purchased the plot from defendant no.1 but despite the order of the Hon'ble High Court, none of the defendants did appear in the court and had denied the right. So even prima-facie there is no denial to the right of the plaintiff. Besides this, the plaintiff has not alleged either in the plaint or in the testimony that either of the defendants are denying or interested to deny his right. So eventually, the plaintiff is not putting up his case for declaration. Besides this, the plaintiff is seeking declaration on the basis of the documents which would otherwise do not create any right except the acknowledgement of his right. The agreement to sell simply shows that the parties intended to dispose the property under terms and conditions mentioned therein while the General Power of Attorney intends to at torn a person to do certain acts on his or her behalf while the receipt shows the acknowledgement of the receipt of the money and the Will depicts the right after the passing of the Testator while it is not pleaded that the Testator i.e. the Defendant No.1 had passed away, rather it is alleged that it is the defendant no.1 himself who threatened to dispossess the plaintiff. So, virtually on the basis of the documents, a title cannot be created and the declaration cannot be made as the defendants did not come and contest the suit. So, in view thereof, I do not find any substance so far as seeking the declaration by the plaintiff is concerned. Consequently, the relief of declaration is hereby denied.”

25. From the judgment, it is evident that the Court was of the view that Decree Holder was seeking declaration of title on the basis of documents such as Agreement to sell, GPA etc. which did not entitle him to a relief of declaration as no title was created by these

documents. This decree was never challenged by the original Decree Holder. Since the Trial Court did not grant a declaratory decree of title in favour of the Decree Holder, in my view, Executing Court rightly held that the Petitioners cannot seek execution premised on a sale deed between them and the Decree Holder and granted liberty to file a separate suit.

26. The matter involves another important facet. The whole dispute between the original Decree Holder and the DDA has its genesis in the action of DDA in attempting to fence the property with a barbed wire and which, according to DDA, is a plot falling in Khasra No.3551/2635, allegedly acquired under an Award and distinct from the plot of the Decree Holder which falls in the Khasra No.2364/01. Decree Holder had filed the suit for declaration and permanent injunction against the alleged illegal action of encroachment of his plot by DDA by fencing it and placing its own board, reflecting possession. This issue remained uncontested before the Trial Court during the pendency of the suit as DDA never filed its written statement and thus there was no adjudication on the identity of the suit property and demarcation etc. and even today this dispute remains unresolved and would require adjudication.

27. Thus seen holistically, the original Decree Holder failed to obtain a decree for declaration of ownership/title to the suit property and this was followed by a dispute with regard to the very identity of the suit property, in respect to which the execution is being sought by the Petitioners herein, as subsequent purchasers. In these facts, the Executing Court held and rightly so that Petitioners cannot step into the shoes of the Decree Holder and seek a title better than that of the original Decree Holder. However, having said that and conscious of the fact that the Petitioners have a sale deed transferring the suit property in their favour, the Executing Court has not shut their rights

and has granted liberty to file a fresh suit on the same cause of action, before the appropriate Forum, in accordance with law and subject to limitation. In my considered view, the Executing Court has followed the correct course of action and it is open to the Petitioners to file a suit as permitted by the Executing Court and establish their title to the suit property by placing whatever documents they may have in this regard, before the appropriate Forum.

28. For all the aforesaid reasons, the revision petition is dismissed, being devoid of merit.

MAY 25, 2023/kks

JYOTI SINGH, J

