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

% *Date of Decision: 21st April, 2023*

+ C.R.P. 187/2022 & CM APPL. 48050/2022, 6326/2023

RANJEET SINGH

..... Petitioner

Through: Mr. Shivendra Singh,
Advocate.

versus

UTTAM CHAND DECEASED

THROUGH LRS

..... Respondents

Through: Ms. K. Sarada Devi, Advocate
for Respondents No.1 to 3 along with
Mr. Kartik Malhotra, Respondent No.1/
Decree Holder No.1A-in-person.

Mr. Narender Kumar Verma, Advocate for
Proforma Respondents No.8 to 12 along
with Mr. Subhash, Respondent No.8/
Judgment Debtor No.3A in person.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. By this revision petition, Petitioner challenges an order dated 15.10.2022, passed by the Executing Court in Misc. Ex. No.7/20 and also seeks a direction to transfer the execution petition to the Court of competent jurisdiction in terms of Section 39 CPC.

2. At the outset, it needs to be noted that the revision petition has been adjourned on several dates on account of service on legal heirs of Judgment Debtors No. 2 to 4. Petitioner has impleaded the legal heirs of the said Judgment Debtors as proforma Respondents and this Court does not find the necessity to adjourn the matter any further for their service, for the reason that none of the legal heirs of Judgment Debtors

No. 2 to 4 have assailed the impugned order and in any event, the decree binds them.

3. Some relevant facts are necessary to be captured for deciding the present petition. Deceased Sh. Uttam Chand was the Plaintiff in the suit and Petitioner herein was one of the Defendants. Suit was filed by the Plaintiff on 17.02.1979 being Suit No. 376/1993 against four Defendants alleging that he was the owner of the suit property by virtue of a Certificate of Sale dated 04.01.1965, predicated on the ground that late Sh. Tara Chand, father of the Defendants had forcibly taken possession of the suit land in 1975. Trial Court dismissed the suit on 14.07.1998 and the order was challenged by the Plaintiff before First Appellate Court in RCA No. 28/2002. The findings and order of the Trial Court were reversed by the First Appellate Court and the suit was decreed vide judgment and decree dated 05.07.2003.

4. Decree Holder filed Execution No. 26/2003 on 24.07.2003 for execution of the decree. Judgment Debtors filed Regular Second Appeal being RSA No. 225/2003 before this Court on 18.12.2003. On 19.12.2003, this Court issued notice in the Appeal and stayed the operation and execution of the judgment and decree dated 05.07.2003, till the next date of hearing. The interim order continued from time to time and Appeal was admitted on 27.08.2010 and the interim order was made absolute.

5. On account of the stay order being made absolute, the Executing Court on 17.09.2010 adjourned the execution *sine die*, taking note of the order passed by this on 27.08.2010. RSA No. 225/2003 was allowed by the Court vide judgment dated 18.02.2011 and the suit was dismissed as time barred. Plaintiff challenged the judgment before the Supreme Court in SLP (Civil) No. 16321/2011 and notice was issued by the Supreme Court on 08.07.2011. Leave

was granted by the Supreme Court on 08.01.2020 and after hearing arguments the judgment was reserved. On 15.01.2020, the Supreme Court allowed Civil Appeal No. 190/2020 and set aside the judgment of this Court, decreeing the suit in favour of the Plaintiff.

6. In the meantime, Plaintiff expired and his legal representatives filed Misc. Ex. 7/2020 on 07.02.2020 under Section 151 CPC, seeking revival of Execution Petition No. 26/2003. Petitioner herein i.e. Judgment Debtor No. 4 filed objections against revival of the execution petition and counsel for LR's of Judgment Debtor No. 2 addressed oral arguments in opposition without formal objections, while LR's of Judgment Debtor Nos. 1 and 3 did not appear, despite service. By the impugned order dated 15.10.2022, the Executing Court allowed the application filed by the LR's of Decree Holder and revived the execution petition to its original number and position.

7. Assailing the order of the Executing Court, learned counsel for the Petitioner contends that doctrine of merger implies that at one point in time, there is only one operative decree. The suit filed by the Plaintiff was dismissed by the Trial Court on 14.07.1998 and the First Appellate Court decreed the suit. However, this Court in RSA No.225/2003 dismissed the suit as time barred and being aggrieved, the Decree Holder approached the Supreme Court and finally, the suit was decreed by the Supreme Court on 15.01.2020. Therefore, in view of Order 45 Rule 15 CPC, execution of the decree passed by the Supreme Court could only be done by the procedure prescribed therein and in support, learned counsel relies on the judgment of the Supreme Court in *Surinder Pal Soni v Sohan Lal (Dead) through LR's, (2020) 15 SCC 771*.

8. It is also urged by learned counsel for the Petitioner that the Executing Court does not have the power to execute a decree against

an immovable property which is situated outside its jurisdiction and this position of law directly flows from Section 39(4) of CPC. In the present case, the suit property is situated in Masjid Moth, South Extension-II, New Delhi and falls within the jurisdiction of the competent court in South District, Saket District Court.

9. *Per contra*, counsel for the Decree Holder contends that the judgment of the Supreme Court clearly reflects that the decree passed by the First Appellate Court was maintained by the Supreme Court and was not modified in any manner. It is further contended that what is being executed is the decree passed by the First Appellate Court, upheld by the Supreme Court and more importantly, the execution petition was filed as soon as the First Appellate Court had decreed the suit, which was however, adjourned *sine die* on account of the order passed by this Court staying the operation of the judgment and the decree. Now that the Supreme Court has set aside the judgment of this Court, which had reversed the judgement of the First Appellate Court, the Executing Court has rightly revived the execution petition.

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

11. Scheme of Order 45 CPC shows that it provides for appeals to the Supreme Court. Rule 1 of Order 45 CPC defines the term 'decree' and Rule 15(1) provides for execution of any decree or order of the Supreme Court and clearly stipulates that whosoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition to the Court from which the appeal to the Supreme Court was preferred. Rule 15(2) provides that such Court shall transmit the decree or order of the Supreme Court to the Court which passed the first decree appealed from or to such other Court as the Supreme Court may direct. There can be no dispute that provisions of Order 45

Rule 15 are mandatory. In the case in hand, the suit was decreed by the First Appellate Court and thereafter, the matter travelled up to the Supreme Court. Perusal of the order of the Supreme Court shows that the Supreme Court set aside the order of this Court dismissing the suit as time barred, whereby order of the First Appellate Court decreeing the suit was upheld. Decree Holder is seeking revival of the execution petition filed for execution of the decree passed by the First Appellate Court. Learned Executing Court has rightly relied on the provisions of Section 38 CPC which provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 37 defines the expression 'Court which passed a decree' to mean and include, where the decree to be executed has been passed in exercise of Appellate jurisdiction, the Court of first instance. Therefore, the Executing Court has rightly allowed the application for revival of the execution petition to execute the decree as a Court of first instance and no infirmity can be found with the impugned order. In my view, the Decree Holder was not required to take recourse to the procedure prescribed under Order 45 Rule 15 CPC and rightly sought revival of the pending Execution Petition.

12. Learned counsel for the Petitioner has urged that the Executing Court, which has revived the execution petition, does not have the territorial jurisdiction to execute the decree since the immovable property in question is situated outside its jurisdiction. Learned counsel for Decree Holder argues that when the execution petition was filed in 2010, the Saket District Court was not in existence and in any case, this objection was not even raised before the Executing Court.

13. Reading of the impugned order shows that the Petitioner did not raise the objection of territorial jurisdiction before the Executing Court. Explanation to Section 37 CPC provides that the Court of first

instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court but in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit. Be that as it may, it is left open to the Petitioner to raise this objection before the Trial Court and it is for the Trial Court to deal with the said objection, in accordance with law.

14. The judgment of the Supreme Court in *Surinder Pal Soni (supra)*, does not inure to the advantage of the Petitioner. The Supreme Court has held that upon the decision of the Appellate Court, there is a merger of the judgment of the Trial Court with the decision rendered in appeal and the doctrine of merger is founded on the rationale that there cannot be more than one operative decree at a given point of time. This position of law is fairly well settled. However, in the present case, as noted above, the Decree Holder is seeking to execute the decree passed by the First Appellate Court which was upheld by the Supreme Court by reversing the finding of this Court to the contrary, with no modification and therefore, by conjoint reading of Sections 37 and 38 of CPC, this Court is of the view that the Executing Court has rightly revived the execution. There is another aspect that needs to be noted in this matter. The suit was filed by the Plaintiff in the year 1979 asserting that he was the owner of the suit property and after a prolonged litigation succeeded before the Supreme Court on 15.01.2020. Execution No.26/2003 was filed on 24.07.2003 and has been revived by the Executing Court by the impugned order passed on 15.10.2022. The Judgment Debtors are still

contesting the revival of the execution petition on one ground or the other and delaying the fruits of the decree coming to the LR's of deceased Plaintiff even till date. There is not a whisper in the Revision Petition that any prejudice is caused to the Judgment Debtors by the revival of the execution petition by the Executing Court, assuming for the sake of argument that the Decree Holder was required to follow the route of Order 45 Rule 15 CPC. The Supreme Court has repeatedly observed that executions are unduly delayed depriving the Decree Holders of getting the benefits under the decrees passed in their favour.

15. For all the aforesaid reasons, the Revision Petition is dismissed as being devoid of merit along with the pending applications.

APRIL 21, 2023/shivam/kks

JYOTI SINGH, J