



\$-

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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **EX.F.A. 9/2022 & CM APPL. 20232-20233/2022**

Between: -

**1. JASRAM (DECEASED) SON OF HARBANS
THROUGH HIS LEGAL HEIRS**

- a. SMT. DHARAMWATI W/O LATE JASRAM
- b. SMT. NIRMALADEVI D/O LATE JASRAM
- c. SMT. DAYAWATI D/O LATE JASRAM
- d. SMT. MAHESHWATI D/O LATE JASRAM
- e. SH. VIRENDER SINGH S/O LATE JASRAM
- f. SH. DEVINDER SINGH S/O LATE JASRAM
- g. SMT. KAVITA DEVI D/O LATE JASRAM

2. SH. SATYA PRAKASH S/O LATE MAM CHAND

3. SH. RAVINDER S/O LATE MAM CHAND

4. SH. AZAD SINGH S/O LATE MAM CHAND

5. SH. RAGHBIR SINGH S/O LATE MAM CHAND

6. SH. SURINDER SINGH S/O LATE MAM CHAND

7. SH. SACHE SINGH S/O LATE MAM CHAND

ALL RESIDENTS OF VILLAGE JASOLA,
NEW DELHI

ALL THE ABOVE HAVE ASSIGNED THEIR RIGHTS AND
HENCE PETITION HAS BEEN PREFERRED THROUGH
THEIR ASSIGNEES

A. SMT, NATASHA BHATI

W/O LATE SH. VIJAY KUMAR BHATI

PREVIOUSLY RESIDENT OF B-34, GREATER KAILASH
NEW DELHI- 110048

PRESENTLY RESIDENT OF:

LTH-3 PH-3,

THE LABURNUM, SUSHANT LOK,

Signature Not Verified
Digitally Signed
By: MAANAS JAJORIA
Signing Date: 16.12.2024
11:16:28

Signature Not Verified
Digitally Signed
By: PURUSHAINDRA
KUMAR KAURAV

GURUGRAM, HARYANA

B. SMT. SANGEETA MALHOTRA

D/O SH. K.L. MALHOTRA

PREVIOUSLY RESIDENT OF:

G-146, KALKAJI, NEWDELHI-19

PRESENTLY RESIDENT OF:

24, NDSE-I, NEW DELHI- 110049

8. SH. MANSA RAM

S/O AMI CHAND

R/O VILLAGE JASOLA,

NEW DELHI

PETITIONER NO. 8 HAS ASSIGNED HIS RIGHTS UNDER
THE SAID AWARD

A. MR. VIJAY KUMAR BHATI (DECEASED)
THROUGH HI LEGAL HEIRS

a. SMT. NATASHA BHATI

W/O LATE SH. VIJAY KUMAR BHATI

PREVIOUSLY RESIDENT OF B-34, GREATER
KAILASH

NEW DELHI-110048

PRESENTLY RESIDENT OF:

LTH-3 PH-3,

THE LABURNUM, SUSHANT LOK,
GURUGRAM, HARYANA

b. SH. ZORAWAR BHATI

S/O LATE SH. VIJAY KUMARBHATI

R/O LTH-3 PH-3,

THE LABURNUM, SUSHANT LOK,
GURUGRAM, HARYANA

c. SH. ARMAAN BHATI

THROUGH HI G.P.A HOLDER

SH. ZORAWAR VIJAY BHATI

S/O LATE SH. VIJAY KUMARBHATI

R/O LTH-3 PH-3,

THE LABURNUM, SUSHANT LOK,
GURUGRAM, HARYANA

B. MR. ROHIT CHECHI
S/O MR. NIRMAL CHECHI
R/O 24, NDSE-I, NEWDELHI- 110049

...APPELLANTS

(Through: Mr. Rajesh Yadav, Sr. Adv. with Mr. Arush Bhandari, Adv.)

AND

UNION OF INDIA
THROUGH LAND ACQUISITION COLLECTOR
D.C. OFFICE (SOUTH EAST)
SAIDULLAJAB, M.B. ROAD
SAKET, NEW DELHI -110017

.....RESPONDENT NO.1

THE LAND ACQUISITION COLLECTOR
D.C. OFFICE (SOUTH EAST)
SAIDULLAJAB, M.B. ROAD,
SAKET, NEW DELHI- 110017

.....RESPONDENT NO.2

(Through: Mr. Sanjay Kumar Pathak, SC with Ms. Manisha Agrawal Narain, CGSC with Mr. Sunil Kumar Jha, Ms. Mussarrat B. Hashmi, Mr. Sami Sameer Siddiqui and Mr. Akhil Gupta, Adv. for UOI

Mr. Chandandeep Singh, Adv. for R-1)

% Reserved on: 25.10.2024
Pronounced on: 13.12.2024

J U D G M E N T

This appeal is directed against the impugned order dated 26.02.2022, in Execution case No.189/2019, passed by the Additional District Judge-01, South East, Saket Courts, New Delhi, whereby, the objections on the maintainability of the execution petition filed by the Union of India, under Order 21 Rule 13, Code of Civil procedure

(hereinafter referred to as CPC) read with Order 22 Rule 10 CPC and

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:16.12.2024
11:16:28

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV

Section 151 of CPC for the execution of the award dated 18.10.2011 has been rejected, however, the execution petition, otherwise, has been dismissed on ground of alleged factual inaccuracies found therein.

BRIEF BACKGROUND OF THE CONTROVERSY

2. The present execution petition was filed by eight Decree Holders through their respective assignees under Order 22 Rule 15 CPC read with Order 22 Rule 10 CPC and under Section 146 read with Section 151 of CPC, seeking execution of the award dated 18.10.2011.

3. The facts of the case demonstrate that in a land acquisition case No.67/2011, Shri Jas Ram (deceased), through his legal representatives and other claimants, namely, Shri Satya Prakash, Shri Ravinder, Shri Azad Singh, Shri Rajbir Singh, Shri Surinder Singh, Shri Sachhe Singh, and Shri Mansa Ram, were held to be entitled to enhanced compensation for their respective shares by the Court of Additional District Judge-02, South Saket, New Delhi.

4. The assignees' case is fundamentally based on two registered Assignment Deeds dated 29.12.2004 and 14.02.2005, besides the relinquishment Deed registered on 20.01.2005, whereby, Smt. Dharamwati w/o late Jas Ram, Smt. Nirmala Devi, Smt. Dayawati, Ms. Maheshwati and Smt. Kavita Devi, daughters of Shri Jas Ram, relinquished their shares in favour of Shri Virender Singh and Shri Devinder Singh, both sons of late Jas Ram.

5. It is, thus, the case of the assignees that they filed an execution petition under Section 146 and Order 21 Rule 16 of the CPC, seeking benefit under the award dated 18.10.2011, on the strength of the aforesaid Assignment Deeds.

6. The Union of India contested mainly on legal grounds, primarily challenging the maintainability of the application by

the assignees under Order 22 Rule 16 CPC and Section 146 CPC read with Section 151 CPC. These objections are summarised in the following points:-

- (i) An execution petition earlier filed on similar grounds was dismissed on 20.09.2016.
- (ii) There are newly added persons posing themselves as Decree Holders.
- (iii) Assignees cannot be the Decree Holders as they have not applied for the impeachment of their names in place of the assignee during the reference proceedings.
- (iv) The Assignment Deed dated 14.02.2005 is before the decision dated 18.10.2011 and principally, Order 22 Rule 16 CPC is not applicable.
- (v) There was no appearance of the legal heir of Decree Holder No.1, Devinder Singh before the Reference Court.
- (vi) The signatures appearing on the application and affidavit and those appearing on the Assignment Deed, do not tally with each other.

7. The case of the Union of India is that the previous execution petition was dismissed on 20.09.2016, for want of prosecution, as no process fee was paid despite Court orders. It was argued that the assignees should have filed a separate civil suit to assert their rights based on the Assignment Deeds. Thereby, in light of the decision rendered by the Supreme Court in the case of ***Ramji Gupta & Anr vs Gopi Krishan Agrawal (D) and Ors¹***, the execution petition was sought to be dismissed.

8. The Executing Court *vide* its impugned order, rejected the

Union of India's objections regarding the maintainability of the execution application under Section 146 and Order 22 Rule 16. The Court observed that the previous execution petition was dismissed for want of prosecution, as no process fee was paid despite the Court's orders. The Court further determined that it was not necessary for the assignees to seek substitution in place of the assignors before the decree was passed. The Court had held the execution petition as maintainable on the basis of the Assignment Deeds executed by the assignors in favor of the assignees, despite the decree being passed in favor of the assignors. It has been held that any person claiming under the original petitioners can file or can continue with the execution petition with respect to the decree obtained in favour of the petitioners/assignors.

9. The following findings rendered by the Executing Court clearly rejected the legal objections of the respondent:-

*30. Provision of Section 146 CPC has been invoked in this execution petition which provides that any legal proceedings may be taken up by or against any person "claiming" under another person. Thus, it protects the rights of persons who are interested in the subject matter by way of devolution or Assignment. It is settled that provision under Section 146 CPC is a beneficial provision and should be construed liberally. Further that an explanation has been added under Order XXI Rule 16 CPC in the year 1976 which clarifies that it does not affect provision of Section 146 CPC. It is also settled that even if an application would not be filed directly under the provision of Order XXII Rule 10 CPC, it would still be maintainable under Section 146 CPC. **Therefore, it is settled that any person claiming under the original petitioners can file or can continue with execution petition with respect to decree obtained infavour or petitioners/ assignors.***

31. The above discussion answers the basic legal objections raised by UOI against this execution petition filed by assignees on the basis or Assignment Deed executed by assignors in favour of assignees even thorough decree was passed in favour of assignors.

32. Order XXI Rule 58 CPC contemplates a situation where execution of Decree Holder may be objected by assignee of interest in

the subject matter of decree. No such objection has been filed in this

matter.

10. Paragraph 33 onwards of the impugned judgment, relates to the purported factual aberrations, which read as under:-

“33. However, there are certain factual aberrations which need to be underlined. Notice of execution petition in case of Order XXI Rule 16 CPC was issued to assignees which was noted to be served. There are two Assignment Deeds in question. It is stated that petitioner no. 1 through his legal heirs and petitioners no.2 to 7 have assigned their rights in favour of assignees by way of execution of registered Assignment Deed dated 14.02.2005 and petitioner no.8 separately executed a registered Assignment Deed dated 23.12.2004. In the previous execution petition which was dismissed vide order dated 20.09.2016. Assignment Deed dated 14.02.2005 was placed on record whereas Assignment Deed dated 23.12.2005 was not placed on record. It is noted that none of these Assignment Deeds were placed on record during the pendency of the Reference petition even though it is claimed as part of this execution petition that reference petition was cootested on behalf of assignees.

34. It is noteworthy that application under Order XXII Rule 4 CPC was earlier moved in the main reference petition on behalf of sons of the deceased petitioner no.1, Sh. Jas Ram. Names of sons were mentioned therein as Sh. Virender Singh and Sh. Devender Singh. It is noted that this application was signed only by Sh. Devender Singh and not by Sh. Virender Singh. It is claimed in that application that entire interest stands relinquished by their mother and their sisters in their favour. However, any Relinquishment Deed was not filed on record and even the date of Relinquishment Deed was not mentioned as part of the application. Taking note of the same, all the legal heirs were directed to be substituted vide order dated 14.03.2007 passed by the Reference Court, even though, none of these appeared before the Court during hearing of the application or during disposal of that application as reflected from the ordersheets. Only counsel on behalf of petitioners was present who prosecuted the entire reference proceedings. It was noted as part of that order that wife of petitioner no. 1 or sisters of petitioner no.1 have not been produced for recording of their statements that they have relinquished their rights or interest in compensation in favour of their brothers, Sh. Virender Singh and Sh. Devender Singh and thus all legal heirs and not just sons were directed to be impleaded. Amended Memo of Parties was filed wherein names of all the petitioners were mentioned including wife and all the four daughters petitioner no. 1, late Sh. Jas Ram. It is interesting to note that Assignment Deed was executed only on behalf of sons of Sh. Jas Ram namely Sh. Virender Singh and Sh. Devender Singh and not by wife or daughters of Sh. Jas Ram who

are the other petitioners in the reference petition. At the time of pronouncement of award, Sh. Jas Ram was alive and compensation was awarded to him along with other co-petitioners and thus, none of the legal heirs was on record at that point of time and came to be substituted only on 14.03.2007. Infact it was directed in the order dated 14.03.2007 passed by the Ld. Reference Court that legal heirs of Sh. Jas Ram shall not be entitled to interest from 14.03.2005 till date of filing of application under Order XXII Rules 1 & 3 CPC on 07.07.2006 since sufficient cause for delay in filing of application was not shown. It is noted that in the Assignment Deed registered on 14.02.2005, there is absolute no mention of any relinquishment of shares by wife or daughters of Sh. Jas Ram in favour of Sh. Virender Singh and Sh. Devender Singh who proceeded to execute the Assignment Deed along with other co-petitioners and on behalf of other legal heirs of deceased petitioner no.1. It is also not mentioned anywhere in the execution petition presently filed under consideration. It is also stressed that even though counsel for assignees also claimed that assignees contested the reference petition, application under Order XXII Rules I & 3, CPC, however, was moved by same counsel who represented assignors / petitioners in the reference petition and subsequently also represented the assignees in the first execution petition which was eventually dismissed.

35. An observation was made by the Ld. Executing Court while dismissing the previous execution petition vide order dated 22.09.2016 that signatures of Sh. Devender Singh, legal heir of DH No.1. Sh. Jas Ram on application under Order XXII Rule 3 CPC do not tally with his purported signatures upon the Assignment Deed dated 14.02.2005. Similar observation can be prima facie made with respect to signatures of Sh. Mansa Ram as appearing on the Assignment Deed dated 29.12.2004 and as appearing on the main reference petition. It is again reiterated as an observation that signatures of Sh. Devender Singh as appearing on the Assignment Deed do not prima facie tally with the signatures on the application under Order XXII Rules 1 & 3 CPC.

36. It is noted that photocopy of Relinquishment Deed was filed along with no objection / reply dated 06.01.2016 filed in the previous execution petition. However, it does not hold ground as all the legal heirs of late Sh. Jasram were ordered to be impleaded. At no point of time, were wife and daughters produced before the Court during reference or even during execution to prove the Relinquishment Deed in question and that they voluntarily intended to so assign their shares in favour of sons and brother.

37. Notice of execution petition was ordered to be issued in the previous execution petition to the assignors for which PF was not filed. It is also noted that notice of this execution petition having been filed on behalf of assignees was ordered to be sent to the

assignors. It was observed in the order dated 18.09.2019 by Ld. Predecessor of Court that notices issues to assignors were duly served. However, any of the assignors till date has not preferred any objection against the Assignment Deed. It is noted that only one person has accepted notice on behalf of the assignors claiming himself to be directly or indirectly related to assignees no.1 to 7. It thus cannot be concluded that wife and daughter of deceased Decree Holder no. 1 were even aware of the execution petition having been preferred by assignees. Thus, noting that there is no Relinquishment Deed filed and accepted on record as per which the shares of wife and four daughters were relinquished in favour of their two brothers and therefore, they could not have assigned their rights in favour of assignors by virtue of any Assignment Deed. Thus, even though it is held that assignees could prefer execution petition within their right under Section 146 CPC, however, on account of factual inconsistencies and aberrations, the compensation cannot be ordered to be released in favour of assignees as it cannot be deduced that all the assignors have duly assigned their rights in favour of assignees since the Assignment Deed has not been executed by all of them.

38. It is noted that if the rights are already relinquished, there was no occasion for filing the execution mentioning the name of the wife and daughters. Further, there is absolutely nothing mentioned in the body of execution petition about relinquishment of shares. It is rather claimed that all the Decree Holders assigned their rights in favour of assignees which is factually incorrect.

39. It is also noted that reply dated 06.01.2016 filed by Sh. Vijay Kumar Bhati in previous execution petition carried reference about Relinquishment Deed and was also supported with a photocopy thereof, however, as reply in the capacity of GPA holder of DHs was dismissed by Ld. Executing Court, same has no legal relevance to be considered by this Court in subsequent execution petition.

40. Objections filed by counsel for UOI stand disposed in terms thereof. Execution Petition being marred with factual inconsistencies cannot be allowed and hence, is dismissed."

11. Aggrieved by the same, the appellants have preferred the instant appeal.

SUBMISSIONS

12. Mr. Rajesh Yadav, learned senior counsel assisted by Mr. Arush Bhandari for the appellants, argued that the impugned decision is materially illegal and improper. According to him, despite repeated

notices from both the Executing Court and this Court, no

representation has been made on behalf of the assignors. He contended that the Executing Court should not have been deterred by the alleged factual inaccuracies, particularly after dismissing the Union of India's legal objections. Mr. Yadav emphasized that the absence of a reference to the relinquishment Deed dated 20.01.2005, in the Assignment Deed does not affect its validity, as both documents are registered and there is a presumption of legality in favour of the registered documents.

13. Learned senior counsel places reliance on the decisions of the Supreme Court in *Prem singh v. Birbal*², *Bellachi v. Pakeeran*³, *Cement Corporation of India v. Priya and Ors.*⁴, *Sharadamma vs Mohammed Pyrejan(D) Tr.Lrs.& Anr*⁵, *D. Prasad v. Jai Prakash University And Ors*⁶ *Rajkumar v. Sardari Lal and Others*⁷, *Sm. Saila Bala Dassi vs Sm. Nirmala Sundari Dassi And Another*⁸, *Mahavir Goel v. UOI*⁹, *K.D. Sawhney and Ors. v. Union of India*¹⁰, *Chandan v. UOI*¹¹ and *Sadhna Gupta v. Shish Pal and Anr*¹²

14. Mr. Sanjay Kumar Pathak and Mr. Chandandeep Singh, learned counsel appearing for the respondent - Land Acquisition Collector and respondent- Union of India, respectively, oppose the submissions and justify the impugned decision. According to them, during the pendency of the land acquisition proceedings, the assignees should have taken necessary steps for the prosecution of the proceedings and when such a recourse has not been taken after passing of the award,

² 2006 (5) SCC 353

³ 2009 (12) SCC 95

⁴ 2004 (8) SCC 270

⁵ 2016 (1) SCC 730

⁶ 2001 (6) SCC 534

⁷ 2004 (2) SCC 601

⁸ 1958 AIR 394

⁹ CMM 98/2015 decided on 03.08.2015

¹⁰ FAO No. 294/2014 decided on 15.10.2014

¹¹ REA 237/1993

¹² 2016 (7) AD (DEL), 454

they were precluded from claiming any benefit accrued, therefrom. It was also submitted that the Union of India has already deposited the awarded amount and is primarily concerned that the amount is rightfully disbursed to the deserving party.

ANALYSIS

15. I have heard learned counsels appearing for the parties and have also perused the record.

16. Before proceeding further, it would be appropriate to take note of the order dated 18.09.2019, passed by the Executing Court which records that the notice issued to the assignor was duly served. The order dated 18.09.2019 reads as under:-

*“Ex. no. 189/18
Jas Ram Vs. UOI and Ors.*

18.09.2019.

*Present: Counsel for Decree Holder
Counsel for UOI alongwith Sh. M.L. Meena,
Kanoongo
Notice issued to LAC has been duly served.
Notice issued to assigner duly served.
BTF has been filed.
Counsel seeks four weeks time to file reply. Heard.
Allowed. **Be filed with copy to the opposite side through any of the
prescribed modes.**
*Put up for further proceedings on 23.10.2019.”**

17. The proceedings dated 08.08.2023, before this Court, would further indicate that the appellant herein was granted a liberty to file an appropriate application for issuance of notice to legal heirs of the appellant, late Shri Jas Ram, who were impleaded as appellant Nos.2 to 8 in the present proceedings, to enable the said parties to confirm execution of relinquishment Deeds and Assignment Deeds. Liberty of *dasti* service through the office of serving agency was granted *vide* order dated 09.11.2023, by the Court.

18. When the matter was posted for service compliance before the Joint Registrar (Judicial) on 15.02.2024, following order was passed:-

“CM No. 9396/2024 (for allowing the notices to be issued by way of publication for appearance to the assignors no. l(a to g) and assignor/appellants no. 2 to 8)

File is placed before me for service of assignors no. l(a to g) and assignor/appellants no. 2 to 8.

As per office note, A8, A8A.a, A8A.b. and A8A.c. is awaited. Be awaited for the next date of hearing.

As per the averments made in the application, appellant has tried his best to locate the fresh and correct address of assignors no. l(a to g) and assignor/appellants no. 2 to 7. Despite best efforts, fresh address could not be located. Application is duly supported by the affidavit and I do not find any reason to disbelieve the submissions made in the application.

In view of the averments made in the application, the same is allowed. Assignors no. l(a to g) and assignor/appellants no. 2 to 7 be now served through publication in Hindi Newspaper, ‘Dainik Jagran’ and English Newspaper, ‘The Times of India’ having circulation in NCR.

PF be deposited within three weeks from now. Dasti allowed.

Put up for filing of proof of service by publication on 19.03.2024 and awaiting the service report of A8, A8A.a, A8A.b. and A8A.c.”

19. Thereafter, on 19.03.2024, the Joint Register (Judicial) records as under:-

“Matter is pending for filing the proof of service of publication. As per office note, affidavit of service has been filed along with proof of publication. It is further mentioned in the report that notice sent to A-8a is unserved with the report 'not residing at the given address' and A-8, A8b and A8c is awaited. As per previous office noting, report of A-8 is awaited.

Learned counsel for appellant submits that he is representing A- 8a, A-8b and A-8c and A8 B.

At this stage, notice needed to be issued to A-8. However, matter is coming up for hearing before the Hon'ble Court on 22.03.2024. Be placed accordingly. The case shall be taken up in this Court as and when directed by the Hon'ble Court.”

20. The service was completed and the service compliance, thereof has been duly recorded in the order dated 24.04.2024 of the Joint Registrar (Judicial), which reads as under:-

“File is placed before me for service of assignors no. 1(a to g) and assignor no. 2 to 8 arrayed in the memo of parties as Appellants to enable them to appear personally or through their duly appointed counsel to confirm the execution of the relinquishment Deed dated 20.01.2023 and the Assignment Deed dated 23.12.2004.

As per office noting dated 21.03.2024, A-8, A-8 (a, b) and A-8 (c) were duly served.

Today, matter is pending for filing the proof of service of publication.

As per office note, proof of service of respondent through publication has been filed. The same is perused. As per which, all the respondents stands duly served.

As per office noting dated 21.03.2024, A-8 has already been served. Since service is complete, matter be placed before the Hon'ble Court on 20.05.2024.”

21. The matter was then called out for hearing on 20.05.2024, before this Court, and on directions the matter was posted for final consideration on 25.10.2024.

22. It is, thus seen that there have been no objections from any assignors or their representatives. Notably, the Union of India did not file any affidavit with written objections. The Assignment Deeds dated 29.12.2004, and 14.02.2005, are registered under the Indian Registration Act, hence, these registered documents are presumed to be legal. This legal principle has been consistently upheld by numerous decisions of the Supreme Court. Reference can be made to ***Pioneer Urban Land And Infrastructure Limited and Anr v. Union Of India***¹³ and ***Manik Majumder vs Dipak Kumar Saha (D) Thr. Lrs.***¹⁴

23. As far as the fact noted by the Executing Court in paragraph 33 of the judgment that none of the Assignment Deeds were placed on record during the pendency of the reference petition, is concerned, the same would be of no relevance keeping in view the provisions of Section 146 read with Order 21 Rule 16 of the CPC. Order 21 Rule 16, which *inter alia* states that where a decree has been passed jointly in favour of two or more persons, the interest of any Decree-Holder in the decree is transferred by Assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application was made by such Decree Holder. The proviso to Rule 16 of Order 21 states that where a decree, or such interest, has been transferred by way of Assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections, if any, to its execution. This position of law is supported by the decision of the Supreme Court in the case of ***Jugalkishore Saraf v. Raw Cotton Co. Ltd.***¹⁵

24. If the facts of the instant case are examined on the foundation of the above-laid legal position, it would show that the Executing Court itself had resorted to the issuance of notice to the assignors and despite service, nobody appeared, therefore, the requirement of proviso of Rule 16 of Order 21 is satisfied. Besides that nothing precluded the Executing Court from proceeding on the basis of the registered Assignment Deed. The fact that the Assignment Deeds were not placed on record in previous execution proceedings, loses its significance in view of the aspect that earlier execution proceedings

got dismissed on account of non-prosecution. It is, thus, seen that the reasoning assigned in paragraph No.33 is irrelevant and suffers from material perversity.

25. The reasoning in paragraph 34 is also deemed insignificant because the wife of appellant No.1 and the daughter of appellant No. 1 had already relinquished their shares to Shri Virender Singh and Shri Devinder Singh, who are also the legal heirs of the late Shri Jas Ram, being his sons.

26. The Assignment Deed had rightly been executed on behalf of the sons of late Shri Jas Ram, namely, Shri Virender Singh and Shri Devinder Singh as the other legal heirs i.e. the wife and daughter of the deceased had already relinquished their shares in favour of Shri Virender Singh and Shri Devinder Singh. Therefore, the Executing Court has gravely erred in doubting the execution of the Assignment Deed only on behalf of the sons of late Shri Jas Ram namely, Shri Virender Singh and Shri Devinder Singh.

27. Considering the findings of the Executing Court in paragraph no. 34, it is seen that the application under Order 22 Rule 4 CPC, in the reference petition filed by the counsel on behalf of assignees does not suffer with any illegality just because the said application bore the signature of only one of the assignees and not of the other. Further, there does not seem to be any conflicting interest between the parties and hence, it can be said that the Executing Court in paragraph No.34 was swayed away with irrelevant considerations.

28. In paragraph No.s 35 and 36, the Executing Court juxtaposed the signatures of Sh. Mansa Ram on the Assignment Deed dated 29.12.2004, with those on the main reference petition. This observation does not appear to be a suitable measure given the

two stages, no one appeared to contest the execution of the Assignment Deeds or the filing of the reference petition. At the stage of execution proceedings, much credence to the alleged discrepancies in the signatures was not warranted.

29. The aforementioned matter should have ideally been scrutinized at the initial stage, particularly if any objections were raised by the claimants. The transferee is permitted to request the execution of the Court's decree, provided it is available for execution, under the same conditions and in the same manner as the Decree Holder would have done. Even the decree passed against the defendant is available for execution against the transferee or the assignee of the defendant, judgment debtor and it does not make any difference whether such transfer or Assignment has taken place before or after the passing of the decree without notice or leave of the Court (see: *Rajkumar v. Sardari Lal*¹⁶)

30. Therefore, even if the relinquishment Deeds and Assignment Deeds were not submitted during the reference proceedings and no claims were raised based on these documents, the assignees are still legally entitled to pursue the execution of the award through validly executed Assignment Deeds. This holds particularly true when there are no objections from the assignors or any third party with a claim through the assignors.

31. In view of the aforesaid, the Court finds that the impugned order dated 26.02.2022 suffers with manifest illegality and material perversity. The same is, therefore, unsustainable in law and deserves to be set aside.

32. Accordingly, the impugned order is set aside.

33. The Executing Court is directed to proceed with the execution case in accordance with the law.

34. The appeal stands allowed and is accordingly disposed of along with all pending application(s). No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 13, 2024/P/dp