



2024:DHC: 96



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IN THE HIGH COURT OF DELHI AT NEW DELHI**Reserved on: 5 January 2024****Pronounced on: 8 January 2024**

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EX.F.A. 47/2023

RAGHUNATH SINGH (DECEASED) THROUGH LRS

..... Appellant

Through: Mr. Ramesh Kumar Jain, Mr.
Mudit Bansal and Ms. Ayushi Vats, Advs.

versus

SATISH CHAND AND ANOTHERS

..... Respondents

Through: Mr. J.K.Jain, Adv. for R-1

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****J U D G M E N T**

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1. There are four *dramatis personae* in this appeal. In the order of their appearance in the story that enfolds, they are Satish Chand (Respondent 1), Raj Kumar (Respondent 2), Raghunath Singh (the appellant) and Sukhma Devi (the wife of Raghunath Singh, who represents him, as Raghunath Singh is no more).

2. CS 327/2014 was instituted by Respondent 1 Satish Chand, as the plaintiff, against Respondent 2 Raj Kumar, as the defendant, in respect of property no. 1677-C, Ground Floor, Todarmal Colony, Prem Nagar, Najafgarh, Delhi-110043 (the suit property) under Section 6¹ of the Specific Relief Act 1963.

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Suit by person dispossessed of immovable property. –Digitally Signed By: AJIT
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3. Satish Chand contended, in the suit, that the suit property, which was a shop, had been taken on rent by him from Raghunath Singh on 1 May 2013 at a monthly rent of ₹ 1700/- excluding electricity charges. He claimed to have been running a shop in the suit property under the name and style “M/s Satish Chand Ruee Centre”. According to Satish Chand, Raj Kumar was also a tenant under Raghunath Singh, but in respect of another shop, which was adjacent to the suit property. Satish Chand alleged that Raj Kumar was seeking to take forcible possession of the suit property and had, towards that end, even registered a false FIR against Satish Chand in PS Najafgarh on 27 January 2014.

4. Consequent on the registration of the said FIR, Satish Chand was arrested. In his absence and behind his back, Raj Kumar broke open the locks on the suit property and misappropriated Satish Chand’s belongings, lying in the suit property, on 27 January 2014. This came to Satish Chand’s notice when he was released on bail on 29 January 2014. Satish Chand also lodged a complaint with the police authorities against Raj Kumar on 1 February 2014.

5. It is in these circumstances that Satish Chand instituted CS 327/2014 against Raj Kumar, alleging that Raj Kumar had taken forcible possession of the suit property, by registering the aforementioned false FIR against Satish Chand in PS Najafgarh on 27 January 2014.

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom he has been in possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that

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As Raj Kumar had allegedly taken forcible possession of the suit property, Satish Chand sought a decree, dispossessing Raj Kumar from the suit property and restoring its possession to Satish Chand.

6. Raj Kumar refuted Satish Chand's claim of having been a tenant in respect of the suit property. Raj Kumar set up a rival claim of tenancy in respect of the suit property, under Raghunath Singh. According to Raj Kumar, he had taken two shops on tenancy from Raghunath Singh, of which the suit property was one. He claimed to have been running a shop in the suit property under the name and style of Bengali Sweets. Raj Kumar claimed to have continued as a tenant in the suit property for over 16 years. Contrary to Satish Chand's assertions, Raj Kumar contended that, in fact, Satish Chand had thrown out Raj Kumar from the suit property in the night between 26-27 January 2014, which was what compelled Raj Kumar to institute an FIR against Satish Chand.

7. In view of the rival stances adopted by Satish Chand and Raj Kumar as the adversaries in the suit, the learned ADJ framed the following questions as arising for consideration, on 1 August 2014:

- “1. Whether the plaintiff was in possession of the suit shop of property bearing No.C-1677, Todarmal Colony, Prem Nagar, Najafgarh, New Delhi-43 as shown in red colour in the site plan prior to his dispossession i.e. on 27.01.2014? OPP
2. Whether plaintiff is entitled for a decree of possession in respect of the suit shop as prayed for in the suit ? OPP
3. Relief.”

Signature Not Verified may be set up in such suit.

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8. The learned ADJ proceeded to rule, in respect of the three issues framed by him, thus.

9. Re. Issue 1

9.1 Apropos Issue 1, the learned ADJ held that, in order to succeed in a claim under Section 6 of the Specific Relief Act, Satish Chand was only required to prove, firstly, that he was in possession of the suit property till 27 January 2014 and, secondly, that he was dispossessed from the suit property, on 27 January 2014, by Raj Kumar.

9.2 The learned ADJ found that the evidence of PW-1, PW-2 and PW-3 proved that Satish Chand had in fact been in possession of the suit property till 27 January 2014 as a tenant under Raghunath Singh.

9.3 The burden had, thereupon, shifted to Raj Kumar to support his claim of having been in possession of the suit property as a tenant under Raghunath Singh, which he had not successfully discharged.

9.4 In view thereof, the learned ADJ held that Satish Chand had succeeded in proving that he was in possession of the suit property till 27 January 2014 and that his possession was forcibly taken over by Raj Kumar.

9.5 Issue 1 was, therefore, decided in favour of Satish Chand and against Raj Kumar.



10. Re. Issues 2 and 3

The findings on Issues 2 and 3 were an inevitable sequitur to the findings on Issue 1. Having found that Satish Chand was in fact in possession of the suit property till 27 January 2014, and that he was forcibly dispossessed by Raj Kumar, the learned ADJ held Satish Chand to be entitled to a decree of possession in respect of the suit property against Raj Kumar. The suit was accordingly decreed. Admittedly, the judgment and decree dated 19 November 2016 was never challenged by any means known to law and has, therefore, become final.

11. Satish Chand filed Execution Civil 1267/2017 before the learned ADJ for execution of the aforesaid judgment and decree dated 19 November 2016.

12. Raj Kumar filed objections against the Execution Petition under Order XXI Rule 58² of the CPC, in which he claimed that, during the

² 58. **Adjudication of claims to, or objections to attachment of, property. —**

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, the title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—



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pendency of the suit, he had surrendered possession of the suit property to Raghunath Singh.

13. In view of the said submission, the learned ADJ dismissed Execution Civil 1267/2017 by judgment dated 15 February 2018, holding that as possession of the suit property was no longer with Raj Kumar, the decree could not be executed against him.

14. Aggrieved thereby, Satish Chand moved this Court by way of Ex. FA 19/2018 (*Satish Chand v. Raj Kumar*).

15. Said appeal was decided by a Coordinate Single Bench of this Court by judgment dated 17 September 2018. Paras 17 and 21 to 24 of the judgment are relevant and may be reproduced thus:

“17. The position which thus emerges is, (i) that the appellant/plaintiff himself, admittedly was/is a tenant in the shop under Raghunath Singh; (ii) a decree for recovery of possession of the said shop was passed in favour of the appellant/plaintiff and against the respondent/defendant; and, (iii) notwithstanding the said decree having attained finality, the application for execution of the said decree has been dismissed owing to the stand of the respondent/defendant that he had in January, 2016 i.e. prior to the date of the decree dated 19th November, 2016, delivered possession of the shop to the landlord Raghunath Singh. The question which arises is, whether on a defendant/judgment debtor

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- (a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or
 - (b) disallow the claim or objection; or
 - (c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or
 - (d) pass such order as in the circumstances of the case it deems fit.
- (4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.
- (5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

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so parting with possession of the property, for recovery of possession whereof from him a suit is pending, the suit or the decree ultimately passed therein can be defeated.

21. In my mind there is no doubt as to the position of law. Raghunath Singh, even if landlord of the appellant/plaintiff, could not have recovered possession of the premises let out to the appellant/plaintiff, save in accordance with law. Raghunath Singh on the contrary, has recovered possession of the said premises from the appellant/plaintiff, by taking possession thereof from the respondent/defendant who himself has been found in the judgment and decree in the suit, to have without the consent of the appellant/plaintiff and otherwise than in due course of law, dispossessed the appellant/plaintiff, from the said premises and who has been ordered and/or directed to deliver possession of the said premises to the appellant/plaintiff. If law were to be permitted to allow so, no claim for recovery of possession will ever attain finality or even if allowed by Court, fructify, with the dispossessors, without due process of law, from immovable property or persons in unauthorised occupation of immovable property, after fully contesting the proceedings filed against them for recovery of possession of such property and losing the said proceedings or when on the verge of losing the same, transferring possession to another and the lawful owner/occupier being required to institute fresh proceedings against such transferee.

22. The counsel for the appellant/plaintiff rightly draws attention to Section 52 of the Transfer of Property Act, 1882 which *inter alia* provides that during the pendency of a suit, the property cannot be transferred or otherwise dealt with, so as to affect the right of any of the parties thereto under any decree or order which may be made therein, except under the authority of the Court. The admitted act of the respondent/defendant/judgment debtor, of handing over possession of the shop to Raghunath Singh, during the pendency of the suit filed by the appellant/plaintiff, amounted to otherwise dealing with the property and Raghunath Singh shall remain bound by the decree and the appellant/plaintiff, in execution, will remain entitled to recover possession from Raghunath Singh and/or whosoever else may be in possession of the property unless they establish any independent right.

23. I may add, that it is for this reason only that Order XXI Rule 35 of the CPC, while providing mode of execution of a decree for immovable property, in sub-rule (1) thereof provides that where a decree is for delivery of any immovable property, possession



thereof shall be delivered to the party to whom it has been adjudged, by removing “any person bound by the decree who refuses to vacate the property”. The said Rule does not say ‘....by removing the defendant/judgment debtor from the property’. The decree is thus entitled to be executed, not only against the defendant/judgment debtor but against any person who may be found in possession of the property. This becomes further clear from Rule 102 of Order XXI which provides that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for possession of immoveable property by a person to whom judgment debtor has transferred the property after the institution of the suit in which decree was passed or to the dispossession of any such person.

24. Though the law is absolutely clear and no precedent is required but since the Additional District Judge, notwithstanding the same has dismissed the execution, it is also deemed appropriate to refer to *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust*³ holding that if the resistance to the execution is made by transferee *pendente lite* of the judgment debtor, the scope of adjudication under Rule 101 of Order XXI⁴ of the CPC would be shrunk to the limited question whether he is such transferee and on a finding in the affirmative regarding that point, the Execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102⁵; it was further held that exclusion of such a transferee from raising further objection is based on the salutary principle adumbrated in Section 52⁶ of the Transfer of Property

³ (1998) 3 SCC 723

⁴ 101. **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.

⁵ 102. **Rules not applicable to transferee pendente lite.** – Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation. – In this rule, “transfer” includes a transfer by operation of law.

⁶ 52. **Transfer of property pending suit relating thereto.** – During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation. – For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.



Act. In *Usha Sinha Vs. Dina Ram*⁷ it was further held that a transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law and that Rule 102 of Order XXI of the CPC takes into account the ground reality and refuses to extend a helping hand to purchasers of property in respect of which litigation is pending. It was reasoned that if unfair, inequitable or undeserved protection is afforded to a transferee *pendent lite*, a decree holder will never be able to realize the fruits of his decree and every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction; to avoid such a situation, Rule 102 of Order XXI of the CPC has been enacted.”

16. Nonetheless, in para 26, this Court deemed it appropriate, while setting aside the order dated 15 February 2018 passed by the learned ADJ which dismissed Execution Civil 1267/2017, and remanding the said execution petition for *de novo* consideration, to direct notice to be issued to the appellant Raghunath Singh *to ascertain whether he had any independent claim in respect of the suit property.*

17. Notice was accordingly issued to the appellant by the learned ADJ. As the appellant had expired, his widow and six daughters filed objections to the judgment and decree dated 19 November 2016 under Order XXI Rule 58 of the CPC on 11 March 2020. Paras 7 to 10, 13 and 15 to 20 of the objections may be reproduced thus:

“7. That wife of Sh. Raghunath Singh, namely Smt. Sukhma Devi is owner in possession of the shop in question. By virtue of documents agreement to sell, GPA, Receipt, Will etc. all dated 16.01.1995 executed by Sh. Raghunath Singh in favour of Smt. Sukhma Devi, she became the owner of the property/shop in question.



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8. That since long, the JD Raj Kumar was tenant of Sh. Raghunath Singh for two shops i.e. one of shop in question and second adjacent of first shop.

9. That in January 2016, the JD vacated the shop in question and handed over the same to Sh. Raghunath Singh. This fact of handed over the possession of suit shop was properly informed the JD to the court.

10. That it is pertinent to mention here that Late Sh. Raghunath Singh was the landlord of the entire property. *The Decree Holder was a tenant of one shop (back side) and one Room/Store of Late Sh. Raghunath Singh*, but any ever point of time the Decree Holder had not informed to Late Sh. Raghunath Singh that any civil proceeding in respect of shop in question is going on.

13. That from the statement of Sh. Raghunath Singh in Satish Chand's permanent injunction suit, and Sh. Raghunath Singh's suit for possession it was crystal clear that *Sh. Raghunath Singh had denied the tenancy of Satish Chand in the shop in question.*

15. That in main suit related to present decree the Judgment Debtor Sh. Rajkumar was the alone defendant. The DH malafidely had not made a party to Sh. Raghunath Singh while he was the necessary party for proper adjudication of the matter.

16. That *any ever point of time neither Late Sh. Raghunath Singh nor Smt. Sukhma Devi lent the Shop in question to the Decree Holder.*

17. That in above mentioned matter neither Late Sh. Raghunath Singh nor Smt. Sukhma Devi was the party, so the decree passed in this suit or present execution proceeding cannot be sustained against the Objector.

18. That in main suit related to present proceeding, neither DH nor JD called Sh. Raghunath Singh as a witness.

19. It's a trite law that a order/judgment/proceeding cannot be to impose on any third party which was not a party in the suit.

20. That ends of the justice would be met only if the present Objections of the Objector is allowed by this Hon'ble court as there

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are sufficient and plausible reasons for the acceptance of the present Objections.”

(Emphasis supplied)

18. *Vide* order dated 22 April 2022, the learned ADJ observed and held, in paras 9 to 17, thus:

“9. The suit was dismissed but there was no observation of Ld. Court in the suit with respect to extent of tenanted premises or that the DH of present case was having tenancy of two shops. Though the court discussed that Raghunath filed the suit by amalgamating in one suit i.e. one tenancy of room and one tenancy of one shop but again no observation was given as to what was the extent of tenancy.

10. Para No. 28 of that judgment has been perused and the plea of DH herein regarding the tenancy of two shops was not adjudicated upon so there is no question of res judicata over the same. Order of Hon'ble High Court is also giving power to the court to adjudicate the right of Sh. Raghunath Singh. Though the counsel for DH has argued that JD and Sh. Raghunath Singh are hand in gloves with each other. This argument is accepted that there is another dimension to this argument as to why it can be observed by the court that DH and JD were hand in gloves and why Sh. Raghunath was not made party as DH in that suit.

11. Rather the fact that JD has handed over the possession to Sh. Raghunath was not brought before the court and at any point of time, it has been pleaded by objector that JD has handed over the possession of shop to Raghunath Singh in January, 2016 and suit of the plaintiff was decreed on 19.11.2016 and subsequent development should have been brought on record by DH and it is upon him to explain as to why he concealed the same. So the arguments of objector that in fact JD was tenant in the shop cannot be brushed aside without giving finding on the same.

12. In para No. 9 of the objection, it has been pleaded that JD handed over the possession in January 2016 and in reply, it has been mentioned by DH that he delivered the possession of shop after passing of decree, so this question is to be adjudicated upon.

13. Another point to be considered is that if DH is saying that he was having two shops then he has to explain as to what was the rate of rent and whether it was being paid through cash or cheque

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and what was the extent of tenanted premises for which rent was paid. These question are also required to be adjudicated upon and both the parties are to lead documentary and oral evidence. It is also required to be seen as to whether there was any rent agreement in writing between the parties and what were the terms and conditions of the same because when the suit for possession was filed by Raghunath was dismissed, there was question as to whether property is governed by Delhi Rent Control Act or not and finding was written in favour of present DH and against Raghunath but there is observation in the judgment regarding the rate of rent and it has to be seen whether rate of rent as stated by DH in that case was pertaining to two shops and one room or was one shop and room. This finding is also missing in the judgment dated 06.01.2017 supra.

14. Another point raised before court is that observation was given in judgment dated 19.11.2016 against which was execution filed as to why Raghunath was not produced in evidence by JD of the present case. The counsel for objector has argued that first of all, for want of evidence of Raghunath Singh, in a case of defendant evidence, he should not suffer and his property is involved and it was upon JD to explain as to why he did not explain him regarding pendency of present suit, so that he could move application there and then U/o 1 Rule 10 CPC to implead him as a party. Now he cannot even assail the judgment as he is not party and only option left with him is by way of filing the present objections. The argument is tenable.

15. Second argument is also interested that in both the cases, the DH has produced one Shishpal in his favour and against Raghunath and Shishpal is son in law of Raghunath Singh and he has deposed against his father in law meaning thereby there was something brewing in between DH and Shishpal.

16. So all these questions require answers in the execution on the objection so no straightway order can be passed for issuance of warrants of possession and the objections have forced. The objector is also entitled to have stay in the execution petition.

17. Accordingly, warrants of possession are hereby stayed till the time of decision on objections after leading the evidence by parties. The plea of objector is hereby allowed to that extent.”



19. Satish Chand filed an application under Order XLVII Rule 1⁸ of the CPC seeking review of the order dated 22 April 2022 *supra* of the learned ADJ. That application has been allowed by the impugned order dated 16 August 2023, paras 10, 11 and 12.2 of which read as under:

“10. Having gone through the record very minutely, in my opinion it would have been apt if first of all observations passed by the Hon'ble High Court in Ex. FA No.19/18 be noted. Infact the Hon'ble High Court had dealt with all the aspects of the case and taken note of the plea of the objector that the possession had been handed over back to Raghunath Singh by the JD during subsistence of the case. Hon'ble High Court had observed as hereunder:

“17. The position which thus emerges is, (i) that the appellant/plaintiff himself, admittedly was/is a tenant in the shop under Raghunath Singh; (ii) a decree for recovery of possession of the said shop was passed in favour of the appellant/plaintiff and against the respondent/defendant; and, (iii) notwithstanding the said decree having attained finality, the application for execution of the said decree has been dismissed owing to the stand of the respondent/defendant that he had in January, 2016 i.e. prior to the date of the decree dated 19th November, 2016, delivered possession of the shop to the landlord Raghunath Singh. The question which arises is, whether on a defendant/judgment debtor so parting with possession of the property, for recovery of possession whereof from him a suit is pending, the suit or the decree ultimately passed therein can be defeated.

⁸ 1. **Application for review of judgment. –**

- (1) Any person considering himself aggrieved—
(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
(b) by a decree or order from which no appeal is allowed, or
(c) by a decision on a reference from a Court of Small Causes,
and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

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21 In my mind there is no doubt as to the position of law. *Raghunath Singh*, even if landlord of the appellant/plaintiff, could not have recovered possession of the premises let out to the appellant/plaintiff, save in accordance with law. *Raghunath Singh* on the contrary, has recovered possession of the said premises from the appellant/plaintiff, by taking possession thereof from the respondent/defendant who himself has been found in the judgment and decree in the suit, to have without the consent of the appellant/plaintiff and otherwise than in due course of law, dispossessed the appellant/plaintiff, from the said premises and who has been ordered and/or directed to deliver possession of the said premises to the appellant/plaintiff. If law were to be permitted to allow so, no claim for recovery of possession will ever attain finality or even if allowed by Court, fructify, with the dispossessors, without due process of law, from immovable property or persons in unauthorised occupation of immovable property, after fully contesting the proceedings filed against them for recovery of possession of such property and losing the said proceedings or when on the verge of losing the same, transferring possession to another and the lawful owner/occupier being required to institute fresh proceedings against such transferee.

22. The counsel for the appellant/plaintiff rightly draws attention to Section 52 of the Transfer of Property Act, 1882 which *inter alia* provides that *during the pendency of a suit, the property cannot be transferred or otherwise dealt with, so as to affect the right of any of the parties thereto under any decree or order which may be made therein, except under the authority of the Court. The admitted act of the respondent/defendant/judgment debtor, of handing over possession of the shop to Raghunath Singh, during the pendency of the suit filed by the appellant/plaintiff, amounted to otherwise dealing with the property and Raghunath Singh shall remain bound by the decree and the appellant/plaintiff, in execution, will remain entitled to recover possession from Raghunath Singh and/or whosoever else may be in possession of the property unless they establish any independent right.*

11. It is but apparent that possession of the suit shop was handed over by JD Raj Kumar during subsistence of the suit which was filed by Satish Chand contending that he was wrongly dispossessed. Such handing over of the possession back to owner/landlord does not disentitle DH to seek fruits of decree qua



the subsequent transferee as well though he may be the actual owner of the property. The fact that his settled possession over the shop and dispossession by the defendant/JD have been proved on record and thus he is entitled to get the possession back — the same is the objective of a suit U/s 6 of the Specific Relief Act, 1963 i.e. to prevent illegal and unauthorised taking over of possession except by due process of law. Plaintiff had complained that he was wrongly dispossessed. The adjudication is to the effect that indeed he was wrongly dispossessed and he is accordingly to be put back into possession. Notwithstanding the fact that the possession was handed over by the JD to Raghunath Singh the owner/landlord of the property it still does not in any manner defeat the right of the plaintiff/DH to seek the possession for the reason that he was in possession and wrongly dispossessed. The story/pleadings of JD Raj Kumar that he was having possessory right over the shop on the basis of tenancy of Raghunath Singh was discarded for the reason that Ld. ADJ in the decree has observed that the possession was with the DH and he was wrongly dispossessed. It is but obvious that the original owner was Raghunath Singh and he would have accorded his permission to JD Raj Kumar to retain the shop, additionally for the reason that he had one more shop and coupled with the fact that he had inimical terms with the decree holder Satish Chand with whom he was litigating does not in any manner mean that the fruits of decree cannot be given to the DH owing to this particular plea of handing back possession to the owner of the property.”

12.2 Considering the totality of facts and circumstances of the case, in my opinion there was no justification for directing the parties to lead evidence in view of categorical directions passed by the Hon’ble High Court as possession of the suit shop had already been handed over by JD Raj Kumar to Raghunath Singh during subsistence of the case itself. Suit had been decreed in favour of DH and fruit of decree cannot be denied merely on the plea that JD has already handed over possession to Raghunath Singh the original owner/landlord. There is an error apparent on record and the order dated 22.04.2022 passed by my Ld. Predecessor is liable to be set aside by exercising the review jurisdiction.”

20. Aggrieved by the said order, Raghunath Singh, who is undisputedly the landlord of the suit property, has preferred the present appeal before this Court.



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21. I have heard Mr. Ramesh Kumar Jain, learned Counsel for the appellant and Mr. J.K. Jain, learned Counsel for the respondent.

22. Learned Counsel for the appellant submits that the impugned order travels far beyond the limited confines of review jurisdiction as conferred by Order XLVII of the CPC.

23. The learned ADJ has, in his submission, effectively sat in appeal over the judgment of his predecessor. He submits that the learned ADJ was perfectly justified in observing that the rival contentions required to be tested on evidence and, therefore, relegated the parties to trial. He submits that the order dated 22 April 2022 was in fact passed *ad invitum* against Satish Chand, who chose not to implead the appellant in the suit instituted by him against Raj Kumar. He further submits that it was the appellant's clear and categorical case that he had never inducted Satish Chand as a tenant in the suit property and that Raj Kumar had remained his tenant from the beginning. He also disputes the appellant's claim of having been in possession of the suit property at any point of time.

24. Learned Counsel further contends that, in the absence of proof of possession, there could be no question of any relief being granted under Section 6 of the Specific Relief Act. All these facts, he submits, were rightly noted by the learned ADJ as requiring a trial and leading of evidence, so that there was no occasion, even on merits, for the



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order dated 22 April 2022 of the learned ADJ to be reversed in review jurisdiction.

25. In support of his submission that the impugned order travels beyond the confines of review jurisdiction, Mr. Jain relies on the judgment of the Supreme Court in *Sanjay Kumar Agarwal v. Sales Tax Officer*⁹.

26. Mr. J K Jain merely reiterates the reasoning contained in the impugned order which, he submits, does not brook interference.

Analysis

27. Having heard learned Counsel and perused the material placed on record, I do not find that any case for interference with the impugned order dated 16 August 2023 of the learned ADJ exists.

28. It is true that the scope of review jurisdiction is limited. A review court cannot sit in appeal over the decision under review. The scope of review jurisdiction has thus been authoritatively delineated by the Supreme Court most recently in *Sanjay Kumar Agarwal*, on which learned Counsel for the appellant relies:

“16. The gist of the afore-stated decisions is that:—

(i) A judgment is open to review *inter alia* if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when



circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be “reheard and corrected.”

(v) A Review Petition has a limited purpose and cannot be allowed to be “an appeal in disguise.”

(vi) Under the guise of review, the petitioner cannot be permitted to reagitate and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.”

29. However, it is equally true that, if the decision under review suffers from any error apparent on the face of the record, a case for interference in review jurisdiction is certainly made out.

30. The scope of the expression “error apparent on the face of the record” is not apparent from the CPC and, indeed, as far back as in *Hari Vishnu Kamath v. Ahmad Ishaque*¹⁰, a bench of seven Hon’ble judges of the Supreme Court held that “what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature,



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and it must be left to be determined judicially on the facts of each case”. In ***S. Bagirathi Ammal v. Palani Roman Catholic Mission***¹¹, the Supreme Court held:

“12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the court. *If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie.* Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order. With this background, let us analyse the impugned judgment of the High Court and find out whether it satisfies any of the tests formulated above.

26. *As held earlier, if the judgment/order is vitiated by an apparent error or it is a palpable wrong and if the error is self-evident, review is permissible* and in this case the High Court has rightly applied the said principles as provided under Order 47 Rule 1 CPC. In view of the same, we are unable to accept the arguments of learned Senior Counsel appearing for the appellant, on the other hand, we are in entire agreement with the view expressed by the High Court.”

(Emphasis supplied)

In a challenge to an order passed by the Central Administrative Tribunal refusing to correct what was contended to be an error apparent on the face of the record, the Supreme Court in ***Surjit Singh v. UOI***¹² returned the following clearly critical observations:

“7. In the light of these directions, it is obvious that the Government of India had prepared the seniority list. The

¹¹ (2009) 10 SCC 464

¹² (1997) 10 SCC 592



contention of the promotees which was found acceptable to the Tribunal that preceding the date of amendment the Government was devoid of power to carry forward all unfilled vacancies to the direct recruits and that all these vacancies are meant to be thrown open to the promotees, is clearly a misinterpretation of the rules and on that basis the directions came to be issued by the Tribunal. This Court had suggested on earlier occasion that vacancies meant for the direct recruits may be carried forward for two years after the recruitment year and thereafter the unfilled vacancies would be thrown open to the respective cadres. *Under these circumstances, the view of the Tribunal is clearly illegal; unfortunately, the Tribunal has wrongly stated that if they commit mistake, it is for this Court to correct the same. That view of the Tribunal is not conducive to the proper functioning of judicial service. When a patent error is brought to the notice of the Tribunal, the Tribunal is duty-bound to correct, with grace, its mistake of law by way of review of its order/directions.*

(Emphasis supplied)

31. The impugned order essentially relies on the findings of this Court in its judgment dated 17 September 2018 in Ex. FA 19/2018 to hold that the order dated 22 April 2022 suffered from an error apparent on the face of the record.

32. The issue before this Court is whether the impugned order dated 16 August 2023 trespasses the boundaries of review jurisdiction as conferred by Order XLVII of the CPC.

33. Having perused the order dated 22 April 2022, vis-à-vis the judgment dated 17 September 2018 passed by this Court in Ex.FA 19/2018, I find myself in agreement with the learned ADJ, and I may straightaway say why.



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34. The learned ADJ has not, in the impugned order dated 16 August 2023, dismissed the appellant's objection. He has merely reviewed the earlier order dated 22 April 2022 of his predecessor to the extent it directed the parties to lead evidence and, therefore, reignited the trial. This, according to the impugned order, was palpably erroneous. The view is unexceptionable. In passing the order dated 22 April 2022, the learned ADJ overlooked the observations – nay, findings – contained in the judgment dated 17 September 2018 of this Court in Ex. FA 19/2018. This Court, in unequivocal terms, and, by placing reliance on Section 52 of the Transfer of Property Act and Order XXI Rule 101 and 102 of the CPC, held that the induction of a third party – even if he were the landlord – in the suit premises when the suit was pending, without leave of the Court, was impermissible and that, if such a third party were inducted, he would have to abide by the decree and could not defeat the execution proceedings. More than once, this Court has emphasized that it is *only if such third party could establish an independent right in respect of the suit property* that he would have any locus to obstruct the execution. Inasmuch as an objection under Order XXI Rule 58 has to be decided by the executing Court, such right has to be pleaded in the objections themselves. The objections filed by Sukhma Devi did not plead any such independent right, but merely reiterated the contentions earlier urged by Raj Kumar, which were comprehensively considered and rejected by the learned ADJ while passing the judgment and decree dated 19 November 2016 under execution. Allowing a fresh trial without any such pleading of an independent right, therefore, completely defeated the observations



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of this Court in the order dated 17 September 2018. This was an error which was apparent at a bare glance from the findings in the order dated 17 September 2018, vis-à-vis the averments in the objections filed by the appellant under Order XXI Rule 58. No lengthy process of argument or debate was involved. It, therefore, constituted an “error apparent on the face of the record” and, in so holding, the learned ADJ cannot be said to have erred, either on facts or in law.

35. Mr. Jain, learned Counsel for the appellant submits that, in exercise of review jurisdiction, a court cannot substitute, for the view taken in the decision under review, another view which appears to it to be better.

36. There can be no cavil with this proposition. That, however, is not what the impugned order does. The impugned order holds that the decision, in the order dated 22 April 2022 under review, to restart a trial on the objections that the appellant desired to urge, suffered from an error apparent on the face of the record. The impugned order arrives at this decision essentially on the basis of the findings contained in the judgment dated 17 September 2018 passed by this Court in Ex. FA 19/2018.

37. To my mind, the decision is unexceptionable. The tone and tenor of paras 17 and 21 to 23 of the judgment dated 17 September 2018 passed by this Court in Ex. FA 19/2018 are clear and unmistakable. This court clearly held that, in the said paragraphs, that



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- (i) possession of the premises let out to Satish Chand could not have been recovered by Raghunath Singh save and except in accordance with law,
- (ii) on the contrary, Raghunath Singh recovered possession of the suit property from Satish Chand by taking possession from Raj Kumar,
- (iii) Raj Kumar had himself been found, by the judgment and decree in execution – which had attained finality – to have dispossessed Satish Chand from the suit property otherwise than in accordance with law,
- (iv) if the execution of such a decree could be permitted to be frustrated by the induction, in the suit property, of a third party, to whom the defendant in the suit property surrendered possession, even while the suit was pending, no claim for recovery of possession would ever attain finality or, even if it did, would ever be capable of being executed as new persons would take possession of the suit property,
- (v) Section 52 of the Transfer of Property Act also proscribes transfer of the suit property during the pendency of the suit for recovery of possession, so as to effect the right of any of the parties to the suit, under any decree or order which may be made in the suit, except under authority of the Court,
- (vi) Raghunath Singh was, therefore, bound by the decree and Satish Chand, in execution, would remain entitled to recovery possession from Raghunath Singh and/or any other person who would come into the possession of the suit property unless such person established an independent right,



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(vii) Order XXI Rule 35(1)¹³ of the CPC specifically provided that, in execution of a decree for delivery of immovable property, possession of such property would be delivered to the party in whose favour the decree was passed, by removing any person bound by the decree who refused to vacate the property, (viii) thus, such a decree was executable, not only against the defendant/judgment debtor but also against any person who had come into possession of the suit property during the pendency of the suit,

(ix) similarly, Order XXI Rule 102 provided that nothing in Order XXI Rules 98 and 100 would apply to resistance or obstruction in execution of a decree for possession of immovable property by a person to whom the judgment debtor had transfer the property after the institution of the suit.

38. This Court, therefore, clearly held that Raghunath Singh, having come into possession of the suit property during the pendency of the suit, would be bound by the judgment and decree dated 19 November 2016 which would be executable against him, unless he could establish an independent right. In fact, in para 24, the position in law was further clarified by holding that any resistance to the execution by a transferee *pendente lite* of the judgment debtor would be limited to the issue of whether such objector was in fact a transferee and, if he was, the execution court had necessarily to hold that he had no right to

¹³ 35. **Decree for immovable property. –**

(1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.



resist the execution in view of the clear language contained in Order XXI Rule 102 of the CPC. The following passage from *Silverline Forum*, on which this Court relied to return the said findings make this position clear:

“10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions “arising between the parties to a proceeding on an application under Rule 97 or Rule 99” shall be determined by the executing court, if such questions are “relevant to the adjudication of the application”. A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. *No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.*”

(Emphasis supplied)

39. Para 24 of the judgment dated 17 September 2018 further proceeds to rely on the decision in *Usha Sinha* to hold that the court could not extend a helping hand to a transferee *pendente lite* of property in respect of which a litigation was pending, as, otherwise, a decree holder would never be able to realise the fruits of the decree.

40. In the objections preferred by her under Order XXI Rule 58 of the CPC, Sukhma Devi claimed that (i) Raj Kumar was the tenant of Raghunath Singh in respect of the suit property, (ii) in January 2016, Raj Kumar vacated the suit property and handed over possession thereof to Raghunath Singh and (iii) Satish Chand was never the tenant of Raghunath Singh in respect of the suit property.



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41. No other objection is raised in the application under Order XXI Rule 58 of the CPC filed by Sukhma Devi.

42. These objections had already been raised by Raj Kumar before the learned ADJ and considered while passing the judgment and decree dated 19 November 2016, which forms subject matter of execution.

43. Raghunath Singh could not legitimately seek to urge, with nothing more, that, merely because he had come into possession of the property during the pendency of the suit, he be permitted to urge the very same pleas that had already been urged by Raj Kumar and rejected. In any case, based on the very same pleas, Raghunath Singh could not have had the execution proceedings stymied and a fresh trial initiated. The mere change of the identity of the objector could hardly be a ground for permitting the very same objections, already urged and rejected, to again be canvassed, this time by Raghunath Singh, to protract execution of the judgment and decree dated 19 November 2016- which has become final – indefinitely.

44. This Court, while directing issuance of notice to the appellant Raghunath Singh in its order dated 17 September 2018, clarified that it was doing so as to enable Raghunath Singh *to establish any independent right over the suit property*, if he could. The objections filed by Sukhma Devi on behalf of Raghunath Singh under Order XXI Rule 58 of the CPC did not even plead any such independent right.



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45. The order dated 22 April 2022, therefore, reinitiated the trial proceedings, this time *qua* Raghunath Singh, without examining whether he had, in fact, in his under Order XXI Rule 58 of the CPC, ventilated any independent right.

46. This was clearly not permissible and amounted, in fact, to defeating the intent and purpose of the order dated 17 September 2018 passed by this Court in Ex. FA 19/2018.

47. In that view of the matter, I find no infirmity with the impugned order dated 16 August 2023 passed by the learned ADJ in Execution No. 1348/18.

48. For all the aforesaid reasons, this appeal is bereft of merit and is accordingly dismissed.

C. HARI SHANKAR, J.

JANUARY 08, 2024

dsn