



2024:DHC:9764



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

% *Date of decision: 27<sup>th</sup> November, 2024*

+ **C.R.P. 198/2018, CM APPL. 38074/2018 (stay)**

**FAIZUL (Deceased)**

Through LRs

1. **ANWER**  
S/o Late Noor Hasan
2. **CHAMAN BEGUM**
3. **FATIMA BEGUM**
4. **AMINA BEGUM**  
All D/o Late Noor Hasan

.....Petitioners

Through: Counsel for Petitioner (appearance  
not given).

versus

1. **MOHD. HAMID**  
S/o Mohd. Saeed,  
5213, Sader Thana Road,  
Sader Bazar, Delhi.
2. **SH. YAKUB**
3. **SH. YOUNUS**  
Both sons of Late Noor Hasan
4. **SMT. HASINA**  
W/o Late Noor Hasan



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5. **SMT. MOBINA**  
D/o Late Noor Hasan
6. **MAHMOOD**  
S/o Late Noor Hasan
7. **KHALIL**  
S/o Late Noor Hasan  
All R/o 5213,  
Sadar Thana Road,  
Sadar Bazar, Delhi.

.....Respondents

Through: Mr. I. Ahmed, Advocate for Mr. S.D.  
Ansari, for R1 with R1 in person.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

**C.R.P. 198/2018**

1. A Revision Petition under Section 115 of the *Code of Civil Procedure, 1908*, ('CPC' hereinafter) has been filed on behalf of the Revisionists/ Mr. Anwer, Ms. Chaman Begum, Ms. Fatima Begum and Ms. Amina Begum, legal representatives of Sh. Faizul, against the Order dated 28.08.2018 in Execution Petition No. 137/2014, whereby the Objections under Order 21 Rule 32, 36 and 58 read with Section 47 CPC, filed by them, has been dismissed with cost of Rs.10,000/-.
2. *Learned counsel on behalf of the Petitioners/Revisionists* has asserted that the present Revisionists being legal heirs of Defendant No.1/Faizul, had been impleaded as Defendants in the amended Memo of Parties dated 24.01.2002 by Respondent No.1/Mohd. Hamid (Plaintiff)/Decree Holder and the other respondents were impleaded as Defendants in the main Suit.



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3. The *Respondent No.1* Mohd. Hamid (Plaintiff) had filed *Civil Suit No.34/2001 for Permanent Injunction* for restraining the defendants from obstructing him in raising the height of the existing partition wall in property No.5213, Sadar Thana Road, Sadar Bazar.

4. In the Written Statement, Respondent No.2 to 5 took an Objection that Defendant No. 1/Faizul had died in the year 1982. Consequently, the Plaintiff/Respondent No.1 moved an Application stating that there was a typographical error in mentioning the name of Faizul instead of Ziaul. Consequently, the amendment was allowed and Ziaul was impleaded as Defendant No.1 and the Amended Memo of Parties was filed on 22.09.1998.

5. Thereafter, Ziaul died on 04.03.2001, but no steps were taken for impleadment of his legal heirs. Instead, an Amended Memo of Parties was filed wherein Faizul (deceased) again was impleaded as Defendant No.1 along with his legal heirs who were impleaded to represent him. The Amended Memo of Parties was filed on 24.01.2002.

6. Eventually, a Decree was made against the Respondents No.2 to 7 and the Revisionist, whereby they were restrained from obstructing the Plaintiff/Respondent No.1 from raising the height of the existing partition wall as shown in the Site Plan in Property No.5213, Sadar Thana Road, Sadar Bazar, Delhi.

7. The Execution Petition got filed by the respondent No.1 in which the Respondents filed Objections *under Order 21, Rule 32, 36, 58 read with Section 47 of CPC*, wherein main objection taken by the revisionists was that Ziaul had died on 04.03.2001, but his legal heirs were never brought on record. The Decree is against Faizul, a dead person which is not executable and is a nullity. The Objections was dismissed *vide* Order dated 28.08.2018.



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8. It is submitted on behalf of the Revisionists that the learned Civil Judge has failed to appreciate that since the Decree was against a dead person, it is a nullity and not enforceable against the Revisionists.

9. The Ld. Counsel on behalf of Respondent No.1/Decree Holder, has asserted that the objections taken are baseless and without merit. They have concealed the fact that during the pendency of the Main Suit after the demise of JD No.1, Faizul, his legal heirs were duly substituted on record. The Decree is, therefore, rightly made against the Judgement Debtors. Moreover, the same objections filed earlier by other defendants, have already been dismissed along with cost of Rs.10,000/-, vide Order dated 31.07.2017 and no new grounds have been taken by the Objectors. It is submitted that the Objections have been rightly rejected by the learned Civil Judge.

**10. Submissions heard and record perused.**

11. In order to understand the entire controversy it would be pertinent to refer to the entire litigation which commenced by filing of a Civil Suit for Permanent Injunction in 1998 by Decree Holder/Plaintiff seeking Permanent Injunction for restraining the Judgment Debtor Faizul, Yunus, Yakub, Hasina and Mobina from raising the height of the partition wall to 5 feet.

12. Defendant No. 2 to 5 (who are Respondent No.2 to 5) took an Objection that Faizul had died way back in 1982. The Plaintiff/Decree Holder then moved an Amendment Application asserting that there was a typographical error in mentioning the name of Faizul which in fact should have been Ziaul. The amendment was allowed and the amended Memo of Parties with Ziaul as defendant No.1, was filed in 1998. While the Suit was pending trial, Ziaul died on 04.03.2001 but his LRs were not brought on record. Instead, the LRs of Faizul who are the Revisionists and Respondent



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No.6 and 7, were impleaded vide the Memo dated 24.01.2002. They joined the proceedings and the Suit was continued.

13. In the said Suit, the Decree Holder had examined PW3/Anis Ahmed the landlord of the property in question who explained that he is the Owner/Landlord of the property in which Plaintiff/Decree Holder was a tenant in a part portion on the First Floor along with the roof over the said part portion. Sh. Noor Hassan of which the defendants are the Legal heirs, was in tenancy of the other part of the First Floor of the property in question along with the roof above their portion. He thus, clarified that the Decree holder, the Judgement Debtors and Noor Hassan, of whom the Judgement Debtors are the legal heirs, were the tenants which implies that after the demise of Noor Hassan, his legal heirs have all continued to be the joint tenants in the Suit property. The portion of the Plaintiff and that of the Judgment Debtors/Defendants were clearly earmarked and it had also been established that the tenancy included the roof over their respective portions.

14. The case of the Plaintiff/Decree Holder was that the two portions of the roof, were clearly earmarked by a small wall of about 2 and ½ feet, but in order to maintain the privacy, he intended to raise the wall to 5 feet. In the Judgement, after appreciating the evidence, it was concluded that the respective roofs over the portion of the Decree Holder and the Defendants/Judgment Debtors were separate. Therefore, the Plaintiff's suit was allowed vide Judgement/Decree dated 27.05.2013 and the Judgement Debtors were restrained from obstructing the plaintiff from raising the height of the wall.

15. The *first aspect* which emerges from the record is that similar Objections had been filed by Respondent No.2 to 5, wherein the plea of the



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Suit having been decreed against a dead person i.e. Faizul, was taken. Learned Civil Judge in his Order dated 31.07.2017 observed that even though the Judgment Debtor No.1/Faizul had died, but the Decree can always be executed against his legal heirs. It was also observed that the legal heirs/ Respondent No.2 to 5 were made the party not only in the capacity of legal heirs but in their individual capacity. The Objections were considered to be untenable and the same were dismissed.

16. The present Objections have now been filed by the Revisionists who had been impleaded as legal heirs of deceased Faizul. It is evident from the Memo of Parties and from the Death Certificate of Faizul that he also was son of Noor Hasan, the original tenant and all the Judgment Debtors are deriving their right, title in the Suit property from the original tenant i.e. Noor Hassan. Faizul had died even prior to the institution of the Suit and his name was deleted, instead Ziaul had been impleaded.

17. The present Revisionists who are in fact the brothers and sisters of Faizul, had been impleaded not only as legal heirs but also in their independent capacity, as has been observed in the earlier Order dated 31.07.2017 which has never been challenged by the Judgement Debtors. It is, therefore, evident that Revisionists have been impleaded as the occupants deriving their tenancy rights from the original tenant Noor Hassan. The Suit for restraining the Judgement Debtors from obstructing the Plaintiffs in raising the partition wall on the terrace/second floor was against all the occupant of the adjoining tenanted premises. Therefore, even though Faizul has been mentioned, but as rightly observed in the earlier Order, the Revisionists were impleaded as in their independent capacity way back in 2002. They participated throughout in the trial which ultimately ended in



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the Decree in 2013. Now at this stage having got a Decree against them, they cannot resist the same on hyper-technicalities, especially when they were a party to the suit and had never raised any question about their impleadment. Furthermore, the same Objections having already been dismissed *vide* Order dated 31.07.2017 which has not been challenged, has attained finality.

18. In the present Revision, same Objection of the Decree being against Faizul (deceased) has been raised, but the Revisionist were impleaded not only as the legal heirs, but also the occupants of the property in question. The permanent Injunction had been sought not only against Respondent No. 2 to 5, but also against *all others acting through them*. It is reiterated that the original tenancy was in the name of Noor Hassan and all the respondents are claiming their right through Noor Hassan.

19. The Objections have been rightly dismissed by the learned Civil Judge and does not merit any interference.

20. The Revision Petition is hereby dismissed along with pending Application(s).

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**NOVEMBER 27, 2024**  
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