



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

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Pronounced on: 04th February, 2025

+ **C.R.P. 160/2023 & CM APPLs. 32222-32223/2023, 32416/2023, 10651/2024**

+ **C.R.P. 280/2023 & CM APPL. 51446-51449/2023**

+ **C.R.P. 139/2024 & CM APPL. 23622/2024**

1. **SMT. CHANDO DEVI & ORS.**

W/o Late Sh. Ranjeet Singh

2. **SMT. ARCHANA KUMARI**

D/o Late Sh. Ranjeet Singh

3. **SH. AMARJEET SINGH**

S/o Late Sh. Ranjeet singh

All resident of:

R/o. House No.34,

Masjid Moth

South Extension Part-I

New Delhi-110049

....Petitioners/LRs of JD No. 4

Through: Mr. Shivendra Singh & Ms. Prakriti Rastogi, Advocates.

Versus

1. **UTTAM CHAND (DECEASED) THROUGH LRS(Decree holder)**

1.A. **Kartik Malhotra**

S/o Late Uttam Chand

Respondent No. 1

1.B. **Sangeeta Malhotra**

D/o Late Uttam Chand

Respondent No. 2

1.C. **Neeraj Malhotra**

S/o Late Uttam Chand

Respondent No. 3



All Residents of:
1248, Katra Hussain
Mirza Farash Khana
Delhi

2. **LATE SH. BHAGGWAN DAS** Through Lrs.
... Judgment Debtor No.1

2.A. **Satish Kumar**
S/o Late Bhaggwan Das

R/o House No. 11, Masjid Moth,
South Extension Part-I,
New Delhi-110049

2.B. **Srnt. Shakuntala**
D/o Late Bhaggwan Das
W/o Sh. Jai Kishan

R/o House No: C-18,
Manglapuri, Palam Colony,
Dist-New Delhi-110045

2.C. **Smt. Usha Rani**
D/o Late Bhaggwan Das
W/o Sh. Vijay Shankar

R/o House No: 22,
Bazar Lane- Sisewali Gali,
Gali Bhogal Road,
Dist- Jangpura Extension, New Delhi
New Delhi-110014

2.D. **Smt. Geeta**
D/o Late Bhagwana Dass
W/o Sh. Ashok Kumar

R/o W.Z.407, Gali No.6,



Sadnagar, Dist-Palam Colony,
New Delhi, Delhi-110045

3. **LATE SH. BABU LAL** Through Lrs.

... Judgment Debtor No.2

3A. **Subhash**
S/o Late Babulal

3.B. **Lalitha**
W/o Late Inder Raj S/o Late Babulal

3.C. **Vandana**
D/o Late Inder Raj S/o Late Babulal

3.D. **Ankita**
D/o Late Inder Raj S/o Late Babulal

3.E. **Chinu**
D/o Late Inder Raj S/o Late Babulal

All residents of:
House no. 34A,
Masjid Moth, Near Sai Baba Mandir
South Extension Part -2,
New Delhi -110049

4. **NATHU RAM** (Deceased) Through Lrs.

... Judgment Debtor No.3

4.A. **Phool Singh**
S/o Late Nathu Ram

Proforma Respondent No. 13

4.B. **Smt. Baidwati**
W/o Megh Raj

Proforma Respondent No. 14

4.C. **Anil**
S/o Megh Raj

Proforma Respondent No. 15

**4.D. Chattar Pal**

S/o Late Nathu Ram

Proforma Respondent No. 16

4.E. Durgesh

S/o Late Nathu Ram

Proforma Respondent No. 17

4.F. Bijender

S/o Late Nathu Ram

Proforma Respondent No. 18

4.G. Parveen

S/o Late Nathu Ram

Proforma Respondent No. 19

All residents of:

House No. 34, Masjid Moth,

South Extension Part-I,

New Delhi-110049

4.H. Santosh

S/o Nathu Ram

Proforma Respondent No. 20

4.I. Seema

D/o Nathu Ram

Proforma Respondent No. 21

All residents of:

House No. 189, Jewan Nagar,

Dist-New Delhi

New Delhi-110014

5. LATE SH. BRIJESH KUMAR Through Lrs.**5.A. Lalit Singh (minor)**

S/o Late Brijesh Kumar

Through his mother Kusum

Proforma Respondent No. 22

5.B. Kritika Singh (minor)

D/o Late Brijesh Kumar

Through his mother Kusum

Proforma Respondent No. 23



5.C. Kusum

W/o Late Brijesh Kumar

Proforma Respondent No. 24

All residents of:
House No. 34, Masjid Moth,
South Extension Part-I,
New Delhi-110049

..... Respondents

Through: Ms. K. Sarda Devi, Mr. Kartik
Malhotra & Mr. Neeraj Malhotra,
Advocates.
Mr. N.K. Verma, Advocate for R-3A
to 3E.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid three Civil Revision Petitions arise out of three Orders made in Execution No. 26/2003 in regard to the Judgment and Decree dated 15.01.2020 of the Apex Court.
2. The *Revision Petition C.R.P. 280/2023* has been filed against the Order dated 16.09.2023 in Misc. Ex. 7/2020 whereby the Ld. ASCJ dismissed the Applications filed by the JDs seeking demarcation of the Suit property.
3. The *Revision Petition C.R.P. 139/2024* against the Order dated 08.04.2024 in Misc. Ex. 7/2020 whereby the Application filed by LR of the JDs claiming that the Appeal stood abated, was dismissed.
4. The *Revision Petition C.R.P. 160/2023* has been filed against the Order dated 23.05.2023 in Misc. Ex. 7/2020 whereby Ld. ASCJ declined to



transfer the Execution to District South East, and also dismissed the Objections under Section 47 read with Section 151 CPC.

5. **Briefly stated**, originally *Suit No.376/1993* was filed by Late Sh. Uttam Chand (Decree Holder) claiming himself to be the owner of the suit property bearing Municipal No.34, Khasra Sakni No.9, Masjid Moth, New Delhi by virtue of Sale Certificate dated 04.01.1965. Averment was made that Late Tara Chand had taken possession of the suit property forcibly in the year 1975. Since Tara Chand expired, his legal heirs i.e. Bhagwan Das (since expired on 14.05.2003), Babu Lal (since expired on 12.04.2018), Nathu Ram (since expired on 20.11.2013) and Ranjeet Singh (since expired on 29.12.2022) were brought on record. The suit was dismissed by the Civil Judge, Delhi *vide* Judgment dated 14.07.1998.

6. **RCA No. 28/2002** was preferred by the Decree Holder wherein the impugned Judgment of the learned Civil Judge was set aside and the Suit for possession was decreed by learned ADJ *vide* his Judgment dated 05.07.2003. The Decree Holder then preferred an Execution Petition No.26/2003.

7. In the interim, **RSA 225/2003** got filed by the Judgment Debtors/Defendants wherein the Execution proceedings were stayed. Consequently, the Execution proceedings were consigned *sine die vide* Order dated 17.09.2010.

8. The RSA was allowed and the Suit was dismissed on 18.02.2011. However, Decree Holder then filed **SLP(C) 16321/2011** whereby he succeeded ultimately in getting a decree of possession *vide* Order dated 15.01.2020.



9. Finally, having succeeded in getting a decree of possession, he moved an Application for revival of the Execution Petition, which was allowed by Order dated 15.10.2022. However, the Judgment Debtor was not willing to relent and challenged this Order of revival by filing CRP. 187/2022 which also got dismissed. The endeavors of the Judgment Debtors to somehow defeat the decree of possession, however, did not meet any success and the Revision filed against that Order in this Court, was dismissed on 21.04.2023.

CRP No.139/2024: Challenge to Order dated- rejecting the Application for Abatement of decree:

10. The arduous journey of Decree Holder to reap the benefits of his decree passed in his favour way back in 1998, was yet to be elusive as another set of Applications was filed on behalf of LR's of JD2, Sh. Babu Lal and similar Applications by LR's of Late Sh. Bagwan Das, Late Sh. Nathu Ram and late Sh. Ranjit Singh seeking dismissal of the Execution proceedings essentially on the ground that Sh. Babu Lal, Judgment Debtor had expired on 12.04.2018, a fact which was noticed even during the pendency of the SLP before the Apex Court. On account of demise of Sh. Babu Lal and his LR's not being brought on record in the SLP, it stands abated against his LR's and is inexecutable.

11. The learned Civil Judge referred to Order XXII Rule 1 CPC which provides the death of a Plaintiff or a Defendant shall not cause the suit to abate if the right to sue survives. Order XXII Rule 11 further provides that this Order XXII shall be applicable even to Appeals and the Plaintiff shall



be read as Appellant and Defendant as Respondent and the Suit be read as Appeal.

12. Order XXII Rules 3 & 4 provides that on demise of one of the Plaintiffs or sole Plaintiff/Defendant, if the right to sue survives then the legal heirs of such deceased Plaintiff/Defendant be brought on record. In case no Application is moved for bringing the legal heirs on record, the suit against the said Plaintiff shall stand abated.

13. From the aforesaid provisions, it is evident that the legal heirs of a deceased Plaintiff or Defendant need not be brought on record if the cause of action does not survive against or in favour of the legal heirs, however, if the right to sue survives then the Legal Heirs of Plaintiff/Defendant as the case may be, have to be mandatorily brought on record within the given time frame or else the suit shall stand abated. These provisions are *mutatis mutandis* applicable to the Appeals as provided under Order XXII Rule 11 CPC.

14. Undeniably, Babu Lal had died on 12.04.2018 i.e. during the pendency of the Appeal before the Apex Court and his legal heirs were not brought on record. Pertinently, the question which arises is whether the Appeal stood abated on account of the legal heirs of Babu Lal not being brought on record during the pendency of Appeal.

15. In this context, it would be pertinent to note that the Suit was originally filed against Tara Chand, the Predecessor-in-interest of the Judgment Debtors. It is he who was claimed to be in illegal possession of the suit property from whom the possession was sought which ultimately resulted in a decree of possession in favour of the Decree Holders. On the



demise of Tara Chand soon after the filing of the Suit, his legal heirs were brought on record. It is thus, evident that they were not impleaded in their individual capacity but as legal heirs of Tara Chand from whom they were deriving the title. They were jointly representing the interest which Tara Chand held in the suit property. Even if Babu Lal died during the pendency of Appeal, the estate of deceased Tara Chand got represented sufficiently and appropriately by the other Judgment Debtors.

16. Therefore, it cannot be said that mere non-bringing of LR's of Babu Lal on record during the pendency of the Appeal would result in its abatement. The interest of all the Judgment Debtors being joint, to represent the deceased Tara Chand, the other legal heirs sufficiently represented the estate; therefore, non-impleadment of LR's of Babu Lal during the pendency of the Appeal, would not result in abatement of the Appeal.

17. In A. Viswanatha Pillai And Ors vs Special Tahsildar For Land Acquisition IV and Ors, 1997(4) SCC 177, the Apex Court while considering a similar position wherein during the Appeal one of the co-sharers in respect of suit property died, held that a co-owners is as much an owner of the entire property as a sole owner of the property. No co-owner has a definite right, title or interest in any particular item or a portion thereof. On the other hand, he has right, title and interest in every part and parcel of the joint property. Therefore, when a suit is filed by a co-owner to recover the property from the strangers, the decree would enure to the benefit of all the co-owners. This aforesaid principle of law would be applicable in the appeals as well. Thus, when the original Suit was filed by the two co-owners while the other would join as defendants but they died



during the Appeal, it has to be held that the estate was duly represented by others and the Appeal would not abate merely because legal representatives of some co-sharers were not brought on record.

18. This judgment was followed in the case of Delhi Development Authority vs. Diwan Chand Anand & Ors, 2022 (18) SCR 1053 wherein it was similarly held that the entire Appeal cannot be held to have abated merely on account of non bringing of legal representatives of some of the deceased respondents on record.

19. Therefore, even though LR's of deceased Babu Lal were not brought on record during the pendency of the Appeal before the Apex Court the estate was sufficiently represented by the other Respondents/Judgment Debtors and there was no occasion to hold that the Appeal stood abated.

20. The learned Civil Judge in his Order dated 08.04.2024 has rightly held that the decree does not stand abated and is executable.

21. *There is no merit in the Revision Petition CRP. No.139/2024 which is hereby dismissed.*

CRP No. 280/2023: Application for Demarcation of Suit Property:

22. An Application had been filed by the Judgment Debtors under Section 151 CPC seeking demarcation of property bearing Municipal No.34, Masjid Moth, New Delhi on the premise that this property falls in Khasra No.429 and not in Khasra No.9 and therefore, the proper demarcation of the suit property may be carried out before Warrants of Possession are executed.

23. The decree in respect of the suit property attained finality after about 44 years and at no point of time was the identity of the suit property questioned. The Judgment Debtor never raised any plea that the suit



property falls in Khasra No.429 and not Khasra No.9. It is pertinent to note that whatever may be the Khasra number, the location and the identity of the suit property was never questioned. Irrespective of the Khasra number in which it falls, the identity of the property has never been challenged.

24. The learned Civil Judge has rightly observed that the decree of possession is specific in respect of suit property bearing Municipal No.34, falling within Khasra No.9 and the Executing Court cannot go behind the decree or re-ascertain the demarcation of the suit property.

25. The Application for demarcation of property as filed by the Judgment Debtors, has been rightly dismissed *vide* Order dated 16.09.2023.

Civil Revision No.160/2023: Against Order Dated 23.05.2023 declining to transfer the Execution to District South East, and dismissal of the Objections under Section 47 read with Section 151 CPC by the learned ASCJ.

26. The Judgment Debtor did not accept the finality of the decree and its execution and moved an Application under Section 39(4) read with Section 151 CPC for Transfer of the Execution Petition to the Jurisdictional Court in South East Delhi. The learned ASCJ again dismissed this Application *vide* Order dated 23.05.2023 which is the subject matter of present Civil Revision.

27. The Judgment Debtors filed an *Application under S.151 CPC* that since the Judgment Debtor resides and the suit property is also located in Masjid Moth which comes within the jurisdiction of District South East, New Delhi, the Execution must be transferred to the Court of the concerned



territorial jurisdiction and is not maintainable before the learned ASCJ, Central Delhi. This Application, however, also met with a rejection.

28. S.37 deals with the “*Definition of Court which passed a decree*”. It is pertinent to refer to the Explanation to Section 37 reads as under:-

“S.37 — ...

Explanation: The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.”

29. From this Explanation, it is evident that the Court which passes the Decree shall not cease to have jurisdiction to execute in case there is subsequent transfer of jurisdiction to any other Court.

30. In the present case, the Execution Petition was filed way back in 2003 before the Court of Civil Judge, Central Delhi which undisputedly had the jurisdiction to execute the Decree. However, the Execution got stayed on account of preferring of Appeals by the Decree Holders or the Judgment Debtors before the superior Courts.

31. The Execution when filed before the Court of ASCJ, Central Delhi had the jurisdiction and was competent to execute the decree which attained finality only in 2020. The Execution Petition had been instituted before the Court of competent jurisdiction and had been consigned *sine die* on account of Appeal. Mere subsequent transfer of the area jurisdiction would not



render it without jurisdiction to execute the decree, especially when it was the jurisdictional Court at the time of institution of the Execution Petition.

32. The learned ASCJ has rightly observed that the Execution Petition continued to be maintainable before the said Court and rightly dismissed the Application under Section 151 CPC for transfer of Execution Petition to District South East.

Dismissal of Objections under S.47 CPC of the Petitioners/ Judgment Debtors:

33. The Judgment Debtors have also challenged the dismissal of their Objections preferred under Section 47 read with Section 151 CPC by the learned ASCJ by Order dated 23.05.2023. The Judgment Debtors had taken the objection that the suit property was in fact a vacant land and the structure thereon had been constructed by the ancestors of the Objectors. The Decree Holder therefore, cannot seek recovery of super structure without paying charges for the same.

34. However, it has been finally held in the Decree dated 15.01.2020 that the possession of the suit property is liable to be handed over to the Decree Holders. This aspect never found any mention in any of the pleadings and no such averments were ever made by the Judgement Debtors. In case they intended to claim cost of the super-structure raised over the suit property, this ground should have been raised during the trial to establish that it was a vacant piece of land and the super structure was raised by them. Further, if they did raise the super structure without the consent and permission of the



Decree Holders, they have done so at their own cost and risk. In fact, this contention amounts to going behind the decree and claim is what has not been part of the decree. It is rightly observed by learned ASCJ that the decree has attained finality needs to be executed and the Court cannot go behind the decree.

35. The objections under Section 47 CPC have thus, been rightly rejected by the learned ASCJ.

Conclusion: -

36. Considering the contumaciousness and the frivolity of the Applications filed on behalf of the Judgement Debtor, who in order to defeat the Decree has been adopting every tactic to somehow retain the possession, the aforesaid three Revision Petitions are dismissed as without merit, with cost of Rs.25,000/- each to be paid to the opposite party.

37. The learned ASCJ is directed to proceed with the execution of the decree in accordance with law.

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 04, 2025

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