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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 07th May, 2025*

+ CM(M) 1342/2019 & CM APPL. 40471/2019

MUKESH CHAUHAN (DECEASED) THR LRSPetitioner

Through: Mr. Madan Lal Sharma with
Ms. Tejaswini Verma and Mr. Vikrant
Malwal, Advocates.

versus

MANGE RAM SHARMA & ORSRespondents

Through: Ms. Pushti Gupta and Mr. Joney,
Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. One Sh. Mukesh Kumar Chauhan (since deceased) had filed a suit which was registered as Suit No.182/1998. The abovesaid suit was decreed on 03.04.2001 and based on such judgment and decree, an Execution Petition was filed.
2. Respondents herein had filed objections.
3. Their such objection petition was dismissed by the concerned Executing Court.
4. The First Appeal, filed by the Objectors, was also dismissed and, thereafter, the Objectors were compelled to file Execution Second Appeal before this Court which was registered as Ex.SA No.2/2012. Such appeal was taken up by this Court on 23.03.2012 and after hearing both the sides, the appeal was disposed of with the following directions:-

“6. Appeal is disposed of by setting aside the impugned orders



dated 18.3.2011 and 1.2.2012 so that parties can lead evidence with respect to their respective stands qua the Will dated 17.1.1989. Nothing contained in today's order is a reflection on merits of the case of either of the parties, and the executing Court will decide the objections in accordance with law after evidence is led by both the parties.

7. Parties to appear before the concerned executing Court alongwith copy of the today's order on 30th April, 2012. Appeal is disposed of in terms of aforesaid observations."

5. Resultantly, the parties were again sent back to the learned Executing Court for leading their respective evidence.
6. Learned counsel for the petitioner/Decree Holder submits that the Decree Holder had concluded its evidence and, for the reasons best known to the Objectors, did not lead any evidence.
7. Fact, however, remains that the concerned Executing Court *vide* order dated 08.03.2019 sought its recusal and, resultantly, the petition was placed before the Court of learned District & Sessions Judge, North East District, Karkardooma Courts and *vide* order dated 11.03.2019, the abovesaid petition was transferred to some other Court.
8. Eventually, when the transferee Court took up the matter on 27.07.2019, while observing that it had jurisdiction over North East District only and had no jurisdiction over Shahdara District, directed the transfer of the Execution Petition to the competent Court for execution while also directing issuance of Transfer Certificate and Non-Satisfaction Certificate.
9. Such order is under challenge.
10. The aspect of execution or, for that matter, Transfer Certificate would come into play only once the objections are decided. In case, the objections were to be dismissed, and for the purposes of carrying out execution, if the property of the Judgment Debtor is found to be situated in some other District, the Decree Holder can always make appropriate request in this regard,



seeking transfer of the Execution Petition but, evidently, such stage has not come as yet. In terms of the specific order passed by this Court on 23.03.2012, learned Executing Court was directed to give opportunity of leading evidence to the parties and then to decide the objections in accordance with law. In such a situation, the concerned Executing Court was not justified in issuing any Transfer Certificate.

11. Learned counsel for the Objectors leaves it to this Court to pass appropriate orders in this regard.

12. Manifestly, there is illegality and perversity in impugned order dated 27.07.2019.

13. In view of the abovesaid specific order passed by this Court on 23.03.2012 and in view of the specific directions given by the concerned Court of learned District & Sessions Judge, North East, learned Executing Court should have gone ahead with the Objection Petition, instead of transferring the Execution Petition.

14. While setting aside the above order dated 27.07.2019 and while allowing the present petition, the parties are directed to appear before the Court of learned Principal District & Sessions Judge, North East, Karkardooma Courts who shall then assign the “*Execution Petition and the Objection Petition*” to the concerned Court/Successor Court, for further consideration in accordance with law. Since considerable period has already elapsed, learned Executing Court would make best efforts to dispose of the Execution Petition, as expeditiously as possible.

15. The petition stands disposed of in aforesaid terms.

16. The parties shall appear before the Court of learned Principal District & Sessions Judge, North East, Karkardooma Courts on 16.05.2025 at 2:00 pm.



17. It is, however, clarified that this Court has not given any opinion with respect to the merits of the Objection Petition and it will be entirely upto the learned Executing Court to consider the Objection Petition and to dispose that of in accordance with law, after giving due opportunity of hearing to both the sides.

18. Pending applications, if any, also stand disposed of.

(MANOJ JAIN)
JUDGE

MAY 7, 2025/st/SS