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

% ***Judgment reserved on: 25.09.2026***
Judgment pronounced on: 18.11.2026

\# **CNR No. DLHC010171822026**

\+ EX.F.A. 34/2026, CAV 178/2026, CM APPL. 26977/2026 (Stay) & CM APPL. 26978/2026 (Ex.)

RAKESH SHARMA (SINCE DECEASED) THR LR
.....Appellant

Through: Mr. Randhir Kumar, Mr. Chaitanya Sorot and Mr. Mayur Sharma, Advocates.

versus

SMT. VINEETA SHARMA & ORS. .....Respondents

Through: Mr. Chandrachur Bhattacharyya and Mr. Vinay Dubey, Advocates for R-1.
Mr. Priyam Kaushik, Mr. Harshith Pottangi and Mr. Shirish Singh, Advocates for R-2.
Mr. Amit Kumar Srivastava, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, filed under Order XXI Rule 58(4) of the **Code of Civil Procedure, 1908**[1], by the Appellant, assails the **Order**

[1] CPC

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dated 15.04.2026[2] passed by the **learned District Judge-03, South District, Saket Courts Complex, New Delhi**[3], in Execution Petition No. 263/2025, titled *Vineeta Sharma v. Rakesh Sharma & Ors.*, whereby the objections preferred by the Appellant under Section 47 of the CPC were dismissed, and the execution proceedings were directed to continue in respect of the property bearing **No. A-53, South Extension, Part-II, New Delhi**[4].

BRIEF FACTS:

2. The dispute arises from a partition suit, being CS DJ No. 8078/2016, instituted by Respondent No. 1, Vineeta Sharma, in respect of the suit property. Following the judgment dated 15.05.2018 passed by this Court in RFA No. 301/2017, and subsequent proceedings before the Hon'ble Supreme Court concerning Section 6 of the **Hindu Succession Act, 1956**[5] as amended in 2005, this Court passed a fresh preliminary decree dated 12.12.2024, declaring Respondent No. 1's share as one-third and remanding the matter for final decree proceedings.

3. The learned District Judge thereafter passed an order dated 15.02.2025, followed by a final decree dated 27.10.2025, directing sale of the suit property and distribution of the proceeds in accordance with the shares determined.

4. The Appellant, son of Late Sh. Rakesh Sharma, claims that his father executed a registered **Will dated 20.04.2022**[6], bequeathing his interest in the suit property exclusively in his favour. He alleges that,

[2] Impugned Order
[3] learned Executing Court
[4] suit property
[5] HSA
[6] Will

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despite his instructions and the other parties' alleged knowledge of the Will, the document was not brought to the notice of the courts during the partition proceedings. Probate proceedings in respect of the Will, being PC No. 7/2024, are stated to be pending.

5. Upon initiation of execution proceedings by Respondent No. 1, the Appellant filed objections under Section 47 of the CPC, alleging that the decrees had been obtained by concealing the Will, that execution was premature in view of the judgment dated 15.05.2018, and that execution would prejudice his claimed proprietary rights and residential occupation.

6. By the Impugned Order, the learned Executing Court dismissed the objections, holding that the decrees had been passed by courts of competent jurisdiction and could not be reopened in execution. It further held that the alleged concealment of the Will did not render the decrees nullities and that the Appellant's testamentary claims were to be adjudicated in appropriate proceedings.

7. Aggrieved thereby, the Appellant has preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

8. Learned counsel for the Appellant would submit that the learned Executing Court, while passing the Impugned Order, failed to appreciate the objections raised under Section 47 of the CPC, particularly those concerning the alleged suppression of a registered Will and the consequent prejudice to the Appellant's proprietary rights.

9. Learned counsel would submit that Late Sh. Rakesh Sharma, father of the Appellant, had executed a Will, bequeathing his rights,

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title, interest and undivided share in the suit property, in favour of the Appellant. The probate proceedings in respect of the said Will, being PC No. 7/2024, are stated to be pending adjudication.

10. Learned counsel would contend that, despite repeated instructions, the Appellant's erstwhile counsel failed to bring the Will to the notice of the Court during the partition proceedings, although the other parties were allegedly aware of its existence. Such non-disclosure, according to the Appellant, deprived the Court of material information bearing upon the rights claimed through Late Sh. Rakesh Sharma.

11. Learned counsel would further submit that the Will is the subject matter of separate proceedings, including CS SCJ No. 468/2024, instituted by Respondent No. 2 seeking its cancellation, and CS SCJ No. 835/2024, instituted by the Appellant in relation to the suit property. The Appellant also claims to have moved an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC for placing the Will on record, which allegedly remained undecided before the final decree was passed.

12. Learned counsel would contend that the judgment dated 15.05.2018 passed by this Court in RFA No. 301/2017 stipulated that the partition decree would not be enforceable until the defendants chose to divide their respective shares. It would be submitted that the learned Executing Court has failed to appreciate the effect of the said judgment upon the maintainability of the present execution proceedings.

13. Learned counsel would submit that the objections concerning the Will, the alleged fraud and the Appellant's claim to his father's share warranted consideration under Section 47 CPC before the

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execution proceedings could proceed towards attachment and auction sale. It is contended that such sale would cause serious prejudice to the Appellant's proprietary interests and residential possession.

14. Learned counsel would accordingly pray that the Impugned Order be set aside and appropriate directions be issued for consideration of the Appellant's objections, including the allegations of fraud, in accordance with law.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

15. ***Per contra***, learned counsel for the Respondents would support the Impugned Order and submit that the learned Executing Court has duly considered the objections raised by the Appellant and rightly rejected the same in accordance with law.

16. Learned counsel would contend that the submissions advanced on behalf of the Appellant before this Court are a mere reiteration of the objections already raised before the learned Executing Court, which have been duly considered and dealt with in the Impugned Order and that no ground warranting interference with the same is made out.

17. Learned counsel would further submit that the decrees under execution have been passed by courts of competent jurisdiction and that the executing court cannot go behind the decree or re-examine its merits. He submits that the judgment dated 15.05.2018 passed in RFA No. 301/2017 cannot be relied upon to resist execution in disregard of the subsequent preliminary and final decrees passed in the partition proceedings.

18. Learned counsel would contend that the alleged Will, whose probate is yet to be granted, does not render the decrees nullities or

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furnish a ground to halt their execution. He submits that the Appellant's claim under the Will, including its effect upon the *inter se* entitlement of the legal heirs of Late Sh. Rakesh Sharma, would have to be determined in appropriate proceedings and cannot be adjudicated collaterally in execution.

19. Learned counsel would accordingly submit that the learned Executing Court has rightly dismissed the objections under Section 47 of the CPC, and that the present Appeal, being devoid of merit, deserves to be dismissed.

ANALYSIS:

20. This Court has heard learned counsel for the parties and, with their able assistance, perused the material on record, including the Impugned Order.

21. At the outset, it is apposite to delineate the scope of interference in the present Appeal. The law is well settled that an executing court cannot go behind the decree or sit in appeal over its merits and is required to execute the decree in accordance with its terms. In ***Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman***[7], the Hon'ble Supreme Court recognised a limited exception where the decree is a nullity on account of the court having lacked inherent jurisdiction. The distinction between a decree passed without jurisdiction and one that is merely illegal or erroneous was further explained in ***Rafique Bibi v. Sayed Waliuddin***[8].

22. The principles governing the scope of execution proceedings have also been considered by the Hon'ble Supreme Court in

[7] (1970) 1 SCC 670
[8] (2004) 1 SCC 287

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Periyammal (Dead) Through LRs & Ors. v. V. Rajamani & Anr. Etc.[9]. The present Appeal must, therefore, be examined within these settled parameters.

23. The principal grievance of the Appellant is that the decrees passed in the partition proceedings were obtained by suppressing a registered Will, allegedly executed by his late father, Rakesh Sharma, in his favour. The Appellant contends that the learned Executing Court failed to appreciate the legal consequences of such suppression and erroneously dismissed his objections under Section 47 of the CPC. The question, therefore, is whether the objections raised disclose any ground warranting interference with the Impugned Order.

24. Before examining the aforesaid contention, it would be apposite to notice the relevant findings of the learned Executing Court, which read as under:

> "6. The jurisdiction of an executing court is well-defined and strictly circumscribed. It is well settled that an executing court cannot go behind the decree, sit in appeal over it, or examine its legality or correctness on the merits. The executing court is bound to take the decree as it stands and give effect to it. The only narrow exception to this principle is when the decree is a nullity ab initio i.e., where it was passed by a court suffering from an inherent lack of subject-matter jurisdiction. Unless the decree falls within this narrow exception, the objections of a judgment debtor cannot impede its execution.
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> 6.1 The decree under execution in the present case i.e. the preliminary decree dated 12.12.2024 and the final decree dated 15.02.2025/27.10.2025 have been passed by courts of competent jurisdiction. They are neither void as they do not suffer from any inherent lack of jurisdiction. The executing court is therefore obliged to proceed with their execution.
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> 7. The Objector's first objection is that the execution is premature because the Hon'ble High Court's judgment dated 15.05.2018 in RFA No. 301/2017 held that the decree of partition would not be enforceable until the Defendants choose to divide their shares. This contention is untenable at this stage as firstly, it is to be noted that the Hon'ble High Court simultaneously granted a certificate of

[9] (2025) 9 SCC 568

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fitness to the Decree Holder to appeal to the Hon'ble Supreme Court. That certificate was acted upon. The matter was eventually heard by the Hon'ble Supreme Court and thereafter, by order dated 05.09.2023, the Supreme Court specifically remanded the present case back to the High Court for reconsidering and modifying the decree in tune with the law as settled vide judgment dated 11.08.2020 in *Vineeta Sharma's* case. The 2018 judgment thus did not attain the finality that the Objector ascribes to it; on the contrary, it was subject to the decision in appeal before the Hon'ble Supreme Court which resulted in the order directing a fresh disposal of the appeal by the Hon'ble High Court.

7.1 Secondly, the decree under execution is not the 2018 judgment but the final decree dated 15.02.2025 and the order dated 27.10.2025 passed in final decree proceedings. This final decree, passed pursuant to the High Court's preliminary decree dated 12.12.2024, specifically directs sale of the suit property and distribution of the proceeds. There is nothing in the final decree that renders it non-executable. The executing court is bound to execute the decree as it stands.

7.2 Thirdly, it is well settled that where a later decree supersedes or modifies an earlier one, it is the later decree that the executing court must execute. The final decree dated 15.02.2025 passed pursuant to the High Court's 12.12.2024 preliminary decree, which was itself passed pursuant to the Supreme Court's remand order of 05.09.2023, is the operating decree. Moreover, in para no.5 of the preliminary judgment/ decree dated 12.12.2024 passed by the Hon'ble High Court of Delhi, specifically mentions that impugned judgment and decree of the Ld. Trial Court on 24.11.2016 dismissing the suit is set aside. Thus, when the preliminary decree itself sets aside the judgment/ decree dated 24.11.2016 of the Ld. Trial Court, the judgment dated 15.05.2018 upholding the said judgment and decree also loses its affect and force. When fresh preliminary decree dated 12.12.2024 has been passed by the Hon'ble High Court, the subordinate courts are bound by the same and this court, as an executing court, is also bound by the same as executing court cannot got beyond the decree and question the merits of the judgment/ decree passed. The objection of prematurity is accordingly rejected.

8. The Objector has also alleged fraud mainly that all parties and their counsels fraudulently concealed the registered Will dated 20.04.2022 of Late Sh. Rakesh Sharma from the courts, and that the Decree Holder misrepresented the outcome of the Supreme Court proceedings in the execution petition.

8.1 It is well settled that fraud, when pleaded to render a decree a nullity, must be 'fraud on the court' of a jurisdictional character, for example, obtaining a decree by suing a fictitious person, suppressing the very institution of the suit, or by other means that strike at the court's jurisdiction to entertain the matter. Allegations of fraud that go to the merits such as suppression of evidence,

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concealment of documents, or misrepresentation in pleadings relating to the substantive claims, are defences that must be raised during the trial of the original suit or during appeal and cannot be adjudicated in execution proceedings.

8.2 Applying this settled principle to the present case, the fraud alleged by the Objector i.e. concealment of the Will pertains entirely to matters of evidence and fact going to the merits of the partition suit. Even accepting for the sake of argument that the Will was concealed, such concealment would not take away jurisdiction of the Hon'ble High Court or the Trial Court to adjudicate the partition suit or to pass the impugned decrees.

8.3 Furthermore, the Objector himself acknowledges that the Will was executed on 20.04.2022 and that it was a registered Will. A registered Will is a document of public record. The Objector, who claims to be the sole beneficiary thereunder, had every opportunity and, indeed, an obligation to bring it on record before the Trial Court and the High Court at the appropriate stage of the proceedings. It is not open to a party to not act diligently during trial proceedings and allow decree to be passed and then raise the concealment as a ground in execution. This Court notes that the Objector has already initiated probate proceedings in Test Case PC 7/2024 and a civil suit (CS SCJ 835/2024) for injunction, which are the appropriate forums for adjudicating questions arising from the Will. The ground of fraud is accordingly rejected.

8.4 As regards the alleged misrepresentation in the execution petition about the Supreme Court proceedings, it is noted that preliminary decree dated 12.12.2024 declaring the shares of the respective parties was passed after setting aside the judgment/ decree of the Ld. Trial Court dated 24.11.2016. The factual matrix that the Hon'ble Supreme Court remanded the matter, the Hon'ble High Court passed a preliminary decree declaring the DH's 1/3rd share, and the Trial Court passed the final decree for sale, is not in dispute.

9. The Objector claims that by virtue of the registered Will dated 20.04.2022, he is the sole legal heir and beneficiary of the late Sh. Rakesh Sharma's share in the HUF property, and that consequently the execution cannot proceed against that share.

9.1 This objection cannot be entertained in execution proceedings for various reasons. Firstly, the Objector has himself been impleaded as JD No. l(iii), a legal representative (LR) of Late Sh. Rakesh Sharma, in the present execution proceedings. As a judgment debtor, he is bound by the final decree. Secondly, the executing court cannot modify the decree, create new rights, or alter the share of parties as determined and crystallised by the decree on the basis of a Will whose probate is yet to be granted and whose effect on the partition is yet to be adjudicated. Third, the rights under the Will, if any, can only be determined and given legal effect through appropriate proceedings. It is only after the Will is probated and its legal effect on the partition is adjudicated

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by a competent court that any adjustment, if warranted, can be made. The executing court cannot conduct a roving inquiry into testamentary rights as a collateral issue in execution proceedings, more so, when it has been already observed in para no. 7 of the preliminary decree dated 12. 12.2024 that interse shares of the legal heirs of Late Sh. Rakesh Shanna will be worked out in an independent proceedings. This objection is rejected.

10. The allegation that the Objector's previous counsels, in alleged connivance with the other parties, deliberately failed to raise objections to the decrees and prevented the Objector from effectively presenting his case, is an allegation of professional misconduct. lt is to be noted that the Objector admits having written emails to his earlier counsels requesting them to raise objections. If instructions were given and not followed, the Objector had the liberty to change his counsel at any time and appear personally to press his objections. Having chosen not to do so at the appropriate stages, the Objector cannot, in execution proceedings, seek to re-open and re-litigate matters that have reached finality through multiple rounds of adjudication before the Trial Court, the Hon'ble High Court, and the Hon'ble Supreme Court. This objection is rejected.

11. The fact that the Objector resides in the suit property and has no other accommodation does not constitute a legal bar to execution of a decree for sale. The executing court has no discretion to refuse or defer execution on grounds of the hardship or inconvenience caused to the judgment debtor. The decree, as it stands, orders sale of the suit property. If the Objector believes that the execution of the decree should be stayed or modified on certain grounds, the remedy lies before the appellate forum and not before this executing court. This objection is thus rejected.

12. In view of the detailed discussion above, the objections under Section 47 CPC and objections contained in the reply filed by Judgment Debtor No. l(iii), are dismissed. The objections are found to be legally untenable as they seek re-agitation of matters that have attained finality through multiple rounds of judicial proceedings, and thus constituting an attempt to delay and obstruct the execution of a valid and binding decree.

13. The Execution Petition shall now proceed further in accordance with law.

14. Let **warrants of attachment of the immovable property** i.e. property bearing no. A-53, South Extension, Part-II, New Delhi., be issued on filing of PF and of affidavit of no stay."

25. Having considered the rival submissions and the reasoning adopted in the Impugned Order, this Court finds no ground to interfere with the same.

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26. The Appellant's reliance upon the judgment dated 15.05.2018 passed in RFA No. 301/2017, to contend that the execution is premature, is misplaced. The said judgment was followed by proceedings before the Hon'ble Supreme Court, culminating in the remand of the matter to this Court for reconsideration in light of the law declared in ***Vineeta Sharma v. Rakesh Sharma***[10].

27. Pursuant thereto, this Court passed a fresh preliminary decree dated 12.12.2024, followed by the learned Trial Court's final-decree proceedings directing sale of the suit property. The decree presently under execution is, therefore, the subsequent decree governing the rights and obligations of the parties. The Appellant cannot rely upon the earlier judgment in isolation to resist execution of the subsequent decree.

28. The principal contention concerning the alleged concealment of the Will also fails to furnish a ground for interference in the present proceedings. The distinction between fraud which renders a decree a nullity and the suppression of a document bearing upon the merits of the dispute is material. While a decree demonstrably obtained by fraud upon the Court cannot claim immunity from challenge, every allegation of suppression does not, by itself, render the decree a nullity for the purposes of execution.

29. In the present case, the alleged concealment of the Will concerns the testamentary disposition of the interest of Late Sh. Rakesh Sharma in the suit property. Even if the Appellant's allegation of non-disclosure is assumed for the present purpose, such non-disclosure does not, by itself, establish that the courts passing the preliminary and final decrees lacked jurisdiction to adjudicate the

[10] (2020) 9 SCC 1

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partition dispute.

30. Further, the manner in which the Appellant himself presents the facts does not assist him. On his own case, the Will came into effect on the death of his father on 22.09.2023; the probate proceedings were instituted in February 2024; the Will was read out before all parties in the mediation proceedings in RFA No. 301/2017 on 11.11.2024, prior to the preliminary decree of 12.12.2024; and it was enclosed with an application under Order XXXIX Rules 1 and 2 read with Section 151 CPC filed before the learned Trial Court prior to the final decree.

31. These averments, even if taken at face value, reflect that the parties were not kept in the dark about the Will, and that the Appellant had the means and opportunity to bring it to the Court's notice at the appropriate stage. It was not to await execution and seek, by objections under Section 47 CPC, to have the decree reopened.

32. In fact, it is noted that the Appellant has availed of that remedy, having preferred RFA No. 763/2025 against the final decree, which remains pending before this Court and in which no stay has been granted.

33. The registered will, at best, can only relate to the *inter se* shares of the LRs of late Sh. Rakesh Sharma. The will of the deceased father of the Objector can only be pressed into service for the purpose of determination of the shares as between the legal heirs of Rakesh Sharma and cannot in any manner affect the determination of the share of the Decree Holder, who has been held to be entitled to a one-third share in the property of her father, i.e the grandfather of the Appellant herein and the father of Mr. Rakesh Sharma, the original JD and the father of the Appellant herein. This position also stands fortified by the authoritative exposition of the Hon'ble Supreme Court

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in this regard, as also keeping in view the contents of the order dated 25.10.2024, which has also been extracted in the order dated 12.12.2024, and wherein all the parties have agreed that the shares of the original parties therein would be 1/3rd (one-third) each.

34. Similarly, the registered Will does not, at this stage, conclusively establish the Appellant's entitlement to the entire interest of Late Sh. Rakesh Sharma in the suit property. The preliminary decree dated 12.12.2024 declared the legal heirs of Late Sh. Rakesh Sharma, including the Appellant, entitled to a collective one-third share, while expressly leaving their *inter se* shares to be determined in independent proceedings. The final decree dated 15.02.2025 provides for the sale of the suit property and distribution of the sale proceeds in accordance with the shares determined, with the parties being afforded an opportunity to purchase each other's shares prior to sale by auction.

35. The probate proceedings in respect of the Will remain pending, and the Appellant's entitlement thereunder must be determined in the appropriate proceedings. Accordingly, the Appellant's claim under the Will does not, by itself, furnish a ground to reopen the subsisting decree in execution.

36. The sale of the suit property would not, therefore, extinguish the Appellant's claim under the Will. What is preserved is the collective share of the legal heirs, and the Appellant remains free to establish his entitlement within it in the proceedings already pending. The order dated 27.10.2025, which was passed only for the preparation of the decree sheet, does not alter this position.

37. The allegation that the Appellant's erstwhile counsel failed to place the Will on record despite instructions does not alter this position. The alleged professional misconduct, even if established,

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would not by itself render the decree a nullity or enlarge the jurisdiction of the executing court. The Appellant's remedies in respect of such alleged misconduct, as well as the determination of his testamentary rights, remain distinct from the question of enforceability of the decree.

38. Further, the contention that execution would prejudice the Appellant's proprietary interests and residential occupation is also insufficient to displace the decree directing sale of the suit property. Such hardship, by itself, does not authorise the executing court to refuse implementation of a subsisting decree. The Appellant's claim to his father's share must be pursued in accordance with the directions contained in the decree and in appropriate independent proceedings.

CONCLUSION:

39. In view of the foregoing, this Court finds that the learned Executing Court has duly considered the objections raised by the Appellant and correctly concluded that the alleged concealment of the Will, the challenge founded upon the judgment dated 15.05.2018, and the allegations concerning erstwhile counsel do not furnish a ground to resist execution in the manner sought.

40. No perversity, jurisdictional error or other legal infirmity warranting interference with the Impugned Order has been demonstrated.

41. Accordingly, the present Appeal, along with pending Application(s), if any, stands dismissed, and the Impugned Order passed by the learned Executing Court is affirmed.

42. It is clarified that nothing in this Judgment shall be construed as an expression of opinion on the validity of the Will or on the rights of

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the parties under it. The proceedings, being PC No. 7/2024, CS SCJ No. 468/2024 and CS SCJ No. 835/2024, shall be decided on their own merits, without being influenced by any observation made herein, and the Appellant's rights in respect of the share retained in Court under the decree remain unaffected.

43. No order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 18, 2026/jk

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