

CASE DETAILS

SMT. VED KUMARI (DEAD THROUGH HER LEGAL
REPRESENTATIVE) DR. VIJAY AGARWAL

v.

MUNICIPAL CORPORATION OF DELHI THROUGH ITS
COMMISSIONER

(Civil Appeal No(s). 5409-5410 of 2023)

AUGUST 24, 2023

**[B. V. NAGARATHNA AND
PRASHANT KUMAR MISHRA, JJ.]**

HEADNOTES

Issue for consideration: The question for consideration was whether the High Court was justified in upholding the order of the Executing Court holding that the decree for possession of immovable property is not executable against the judgement debtor, merely because the decree-holder lost possession to an encroacher.

Code of Civil Procedure, 1908 – Ord. XXI rr 97 to 101 – Execution of judgment and orders – Executing Court holding an execution decree as inexecutable, on the ground that the decree-holder lost possession to an encroacher – Correctness of:

Held: Executing Court could not have dismissed the execution petition by treating the decree to be inexecutable merely on the basis that the decree-holder lost possession to a third party/encroacher – If this is allowed, every judgment-debtor in possession of the immoveable property till the decree is passed, would hand over possession to a third party to defeat the decree-holder's right and entitlement and this would continue indefinitely and no decree for immovable property can be executed – It was the duty of the Executing Court to issue warrant of possession for effecting physical delivery of the suit land to the decree-holder in terms of suit schedule property and if any resistance was offered by any stranger to the decree, the same be adjudicated upon in accordance with rr. 97 to 101 of Ord. XXI – On facts,

no resistance offered by any purported stranger/encroacher to the decree – In the absence thereof, the Executing Court had no occasion to invoke Ord. XXI, rr 97 to 101, at the instance of the decree-holder – Executing Court could not have closed the execution proceedings holding that the decree is inexecutable – Thus, the orders passed by the High Court and the Executing Court set aside – Issuance of direction to the Executing Court to execute the decree by effecting delivery of physical vacant possession to the decree-holder. [Paras 10, 15 and 16]

LIST OF CITATIONS AND OTHER REFERENCES

Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal & Anr. (1997) 3 SCC 694 : [1997] 1 SCR 463; *Bhanwar Lal v. Satyanarain* (1995) 1 SCC 6 : [1994] 4 Suppl. SCR 208; *Shreenath & Anr. v. Rajesh & Ors.* (1998) 4 SCC 543 : [1998] 2 SCR 709; *Sameer Singh & Anr. v. Abdul Rab & Ors.* (2015) 1 SCC 379 : [2014] 10 SCR 1004; *Jini Dhanrajgir & Anr. v. Shibu Mathew & Anr.* (2023) SCC Online SC 643 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5409-5410 of 2023.

From the Judgment and Order dated 07.04.2016 in CRP No. 152 of 2012 and dated 04.11.2016 in RP No. 487 of 2016 of the High Court of Delhi at New Delhi.

Appearances:

Gopal Sankaranarayanan, Sr. Adv., Senthil Jagadeesan, Adit S. Pujari, Ms. Maitreya Subramaniam, Ms. Mantika Vohra, Advs. for the Appellant.

Praveen Swarup, Devesh Maurya, Ms. Payal Swarup, Chander Shekher Malhotra, Vivek Verma, Hari Sahteshwar, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****PRASHANT KUMAR MISHRA, J.**

Leave granted.

2. These appeals arise from the judgment and orders dated 07.04.2016 and 04.11.2016 passed in C.R.P No. 152 of 2012 and R.P No. 487 of 2016 respectively, whereby the High Court has affirmed the order of the Executing Court dated 11.09.2012 holding that the decree for possession of immoveable property is not executable against the judgment-debtor.

3. The factual matrix of the case is that the appellant (since deceased represented through Lrs.) who is the original plaintiff, leased out land measuring 400 sq. yds. out of Khasra No. 4/39/1 situated at village Khureji Khas, Abani Radheypuri, Ilaqa Shahdara, Delhi (hereinafter referred to as 'the Suit Land') within the limit of Municipal Corporation Delhi vide lease deed dated 06.01.1973 to the respondent-Corporation (Original defendant) for a period of 10 years initially @ monthly rent of Rs. 30/-, which was renewable with the consent of both the parties, however the lease was not renewed subsequently after expiry on 06.01.1983. Thereafter, the appellant served a notice upon the respondent-Corporation dated 02.12.1987 vide which the respondent-Corporation was called upon to hand over the peaceful vacant possession of the Suit Land on or before 06.01.1988. The respondent-Corporation did not turn to the demand of the appellant.

3.1 The appellant/plaintiff filed Suit No. 205 of 1988 for recovery of possession in respect of the Suit Land against respondent-Corporation/defendant before the Sub-Judge, Ist Class, Delhi, which was decreed for possession in favour of appellant/plaintiff and against the respondent-Corporation/defendant on 23.03.1990.

3.2 Thereafter, the appellant filed execution proceedings bearing Execution Case No. 7 of 1991 to get the decree for possession executed against the judgment-debtor i.e. respondent-Corporation. On 03.12.1993, the appellant/decree-holder obtained warrants for delivery of possession from the Executing Court against the respondent-Corporation. When the appellant/decree-holder along with the police force went on spot to execute

the warrants they were resisted and because of such high-handed behaviour including, *inter alia*, the threats of the employees/agents of the respondent-Corporation to intimidate the appellant, warrants for delivery of possession could not be executed.

3.3 At this stage, the respondent-Corporation moved an application before the Executing Court to stay the operation of the warrants for delivery of possession earlier issued. The Executing Court stayed the execution proceedings until 15.04.1994, while taking into consideration that the demolition of the school building upon the decretal land would affect the career of around 400 students.

3.4 The respondent-Corporation filed objections on the ground that the spot at which the school is built admeasures 1700 square yards and the disputed decretal land cannot be identified. The said objections were rejected by the Executing Court vide order dated 27.05.1994.

3.5 On 19.08.1994, the appellant filed an application for issuance of fresh warrants of possession and the respondent-Corporation on the same day also moved an application to stay the execution proceedings on the ground that the respondent-Corporation had undertaken land acquisition proceedings of the decretal land. By a subsequent application dated 01.03.1996 the respondent-Corporation stated that it had deposited a sum of Rs. 1,60,000/- with the Land Acquisition Commissioner, Delhi.

3.6 The Executing Court vide order dated 19.03.1999 dismissed the said applications of the respondent-Corporation on the ground that the respondent-Corporation had not made any serious effort in a span of eight years to acquire the decretal land and that the acquisition of the decretal land can take place even after the same is handed over to the appellant.

3.7 On account of the refusal of the respondent-Corporation to hand over possession of the decretal land to the appellant, the appellant filed a Contempt Petition before the High Court of Delhi against the respondent-Corporation which was registered as CC No. 126 of 1999, alleging non-compliance of the order of the Trial Court. The Contempt Petition was disposed of vide order dated 20.02.2003 with directions that it would be open to the appellant to take recourse to such steps as may be permissible for the appellant under the law for getting the encroachers evicted.

3.8 Upon disposal of the Contempt Petition, the appellant once again got issued warrants for possession of decretal land. Pursuant to the directions of the Executing Court, the respondent-Corporation submitted demarcation reports dated 13.04.2001 and 24.07.2002 in respect of the suit land and raised the issue of acquisition of the said property.

3.9 The Executing Court vide its order dated 11.09.2012 while taking into consideration the demarcation reports dismissed the Execution Petition filed by the appellant on the ground that the encroacher(s) upon the land in question were not ‘party to the suit’ and, therefore, the decree could not be executed.

3.10 Being aggrieved by the dismissal of the execution petition, the appellant preferred a Revision Petition before the High Court of Delhi which was dismissed vide order dated 07.04.2016 while holding that the appellant has not, despite specific directions, taken any steps to get the encroacher(s) identified.

3.11 The appellant being dissatisfied sought review of the judgment and order dated 07.04.2016 by filing review petition, which saw the same fate as the revision petition.

Hence these appeals by way of petitions for special leave to appeal.

4. We have heard Mr. Neeraj Kishan Kaul and Mr. Gopal Sankaranarayanan, learned senior counsel for the appellant and Mr. Praveen Swarup, learned counsel for respondent and perused the material placed on record.

5. Learned senior counsel for the appellant/decree-holder strenuously contended that since admittedly the respondent-Corporation executed a lease deed and remained in possession of the suit land as a tenant, which fact is established in favour of the appellant/decree-holder in the suit as also in the execution proceedings, at various stages, it is wholly inappropriate for the respondent-Corporation to contend that it is not in possession of the suit land. It is further contended that while resisting delivery the judgment-debtor clearly stated that demolition of the school building for effecting delivery of possession would affect around 400 students and that it is taking steps to acquire the suit land and this fact would itself demonstrate that the judgment-debtor is in possession of the suit land. Even if the suit land is subsequently

encroached by a third party, the judgment-debtor cannot escape the liability of satisfying the decree.

It is next contended that any encroachment on the suit land when it was possessed by the judgment-debtor would not nullify the execution proceedings and it is the duty of the respondent-Corporation, as a local authority, to identify the encroacher, if any, so that effective steps are taken by the Executing Court to deliver physical vacant possession to the decree-holder.

Learned senior counsel would further contend that Order XXI of the Code of Civil Procedure, 1908 (CPC) is a complete code for resolving all disputes, including against strangers to the decree. Therefore, the execution proceedings could not have been dropped by the Executing Court.

6. *Per contra*, learned counsel for the respondent-Corporation would submit that the suit land is not under the possession of the respondent-Corporation rather it is in possession of the encroachers who should have been identified by the decree-holder. It is the specific case of the respondent-Corporation that as per the demarcation report dated 24.07.2002 the land has been identified and the suit land is found situated in the North, 36' away/outside the boundary wall of the school, where some houses have been constructed by unknown persons and the same is not in possession of the respondent-Corporation and for this reason, the acquisition proceedings were dropped.

Supporting the impugned order, it is lastly contended, by way of an alternative submission in para 9 of the written submissions, that though the Executing Court has powers of execution under Order XXI Rules 97 to 101 of the CPC, it can, if permissible in law, take action against the persons who are in possession of the disputed land, or, the decree-holder may file a fresh suit against the encroachers.

DISCUSSION

7. In the judgment and decree dated 23.03.1990, the Trial Court categorically held that the respondent-Corporation is the lessee and since the lease has already been determined upon expiry of lease period of 10 years, the respondent-Corporation/defendant is bound to deliver physical vacant

possession of the suit land and also to pay the rent and that the appellant/plaintiff is entitled to a decree of ejectment and delivery of vacant possession by the respondent-Corporation/defendant in respect of the suit land as shown red in the site plan in Exhibit P4. The respondent-Corporation/defendant was also directed to hand over the possession of the suit land after removing the construction. This decree has attained finality.

8. In the course of execution, it was the stand of the respondent-Corporation, at various stages, that grave prejudice would be caused to the students studying in the school building constructed on the suit land, therefore, instead of delivering the possession, it is in the process of acquiring the decretal land, which stand it continued to take from 1994 till March, 1999, at which point the respondent-Corporation's application not to execute warrant of possession was dismissed by the Executing Court on the ground that it has not made any serious effort to acquire the decretal land for about eight years.

9. Surprisingly, for the first time, on 18.09.2009, the respondent-Corporation informed the Executing Court that the suit land is not in its possession and the same has been encroached upon. On this information of the Judgment/debtor, the Executing Court directed it to disclose whether the land, which the respondent-Corporation is stating to have been encroached upon, is the suit land and if so, then, to disclose as to when the suit land was vacated by the respondent-Corporation. Yet again, on 16.04.2010, the Executing Court observed that till date the respondent-Corporation has not disclosed the fact that as to with whom the suit land presently lies and the Deputy Commissioner of the respondent-Corporation was directed to reply to this query by way of filing an affidavit. When the affidavit was filed, the Executing Court observed that the query has not been responded to properly. The Executing Court in its order dated 21.05.2010 noted the stand of the respondent-Corporation, at the inception of the suit, that the suit land is in its possession but that in execution proceedings, the respondent-Corporation has taken altogether a different stand that the school is running on a different parcel of land. The Executing Court further expressed doubt as to how, at that stage, the respondent-Corporation could take altogether a different stand and observed that it is liable to disclose as to how the possession of the suit land passed from it to a third party.

10. It is also important to notice that throughout the course of the execution proceedings, no resistance was offered by any purported stranger/encroacher to the decree. In the absence of such resistance, the Executing Court had no occasion to invoke Order XXI, Rules 97 to 101, at the instance of the decree-holder or otherwise. Unless, this procedure is adopted, the Executing Court could not have closed the execution proceedings by observing that the decree is inexecutable.

11. In "Brahmdeo Chaudhary vs. Rishikesh Prasad Jaiswal & Anr." (1997) 3 SCC 694, this Court has observed that Order XXI of the CPC lays down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Referring to its earlier judgment in the matter of "Bhanwar Lal vs. Satyanarain" (1995) 1 SCC 6 this Court concluded thus:

'11. In view of the aforesaid settled legal position, therefore, and in the light of the statutory scheme discussed by us earlier it must be held that Respondent 1 decree-holder's application dated 6-5-1991 praying for issuance of warrant for delivery of possession with the aid of armed force, was in substance for removal of obstruction offered by the appellant and others under Order 21, Rule 97 CPC and had to be adjudicated upon as enjoined by Order 21, Rule 97, sub-rule (2) read with Order 21, Rule 101 and Order 21, Rule 98. In this connection the Court had also to follow the procedure laid down by Order 21, Rule 105 which enjoins the executing court to which an application is made under any of the foregoing rules of the order to fix a date of hearing of the application. As the executing court refused to adjudicate upon the obstruction and the claim of the appellant who obstructed to the execution proceedings it had clearly failed to exercise jurisdiction vested in it by law. The High Court in revision also committed the same error by taking the view that such an application was not maintainable. It is of course true as submitted by learned counsel for the decree-holder that in para 4 of the judgment under appeal the High Court has noted that there was some discrepancy about the khasra number. But these are passing observations. On the contrary in the subsequent paragraphs of the judgment the High

Court has clearly held that such an application by the objector was not maintainable and his only remedy was to move an application under Order 21, Rule 99 after handing over possession and consideration of objection to delivery of possession by a stranger to the decree at any earlier stage was premature. It must, therefore, be held that neither the executing court nor the High Court in revision had considered the objection of the appellant against execution on merits. Consequently the impugned judgment of the High Court as well as the order of the executing court in Civil Execution Case No. 25 of 1990 dated 15-2-1996 are quashed and set aside and proceedings are remanded to the Court of Munsif II, Munger to re-decide the application of Respondent 1 decree-holder dated 6-5-1991 by treating it to be one under Order 21, Rule 97 for removal of obstruction of the appellant and after hearing the decree-holder as well as the appellant to adjudicate the claim of the appellant and to pass appropriate orders under Order 21, Rule 97, sub-rule (2) CPC read with Order 21, Rule 98 CPC as indicated in the earlier part of this judgment.'

12. Similarly, in "**Shreenath & Anr. Vs. Rajesh & Ors.**" (1998) 4 SCC 543 this Court observed thus:

'10. Under sub-clause (1) Order 21 Rule 35, the executing court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21 Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. Order 21 Rule 97 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through the judgment-debtor or claiming independent right of his own including a tenant not party to

the suit or even a stranger. A decree-holder, in such a case, may make an application to the executing court complaining such resistance for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the executing courts when such claim is made to proceed to adjudicate upon the applicant's claim in accordance with the provisions contained hereinafter. This refers to Order 21 Rule 101 (as amended by 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 shall be determined by the court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstruction by a stranger is adjudicated and finally given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of the words "any person" it includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.'

13. In "Sameer Singh & Anr. Vs. Abdul Rab & Ors." (2015) 1 SCC 379, this Court again observed that the Executing Court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties including the claim of a stranger who apprehends dispossession from the immovable property. This is provided to avoid multiplicity of proceedings and if a court declines to adjudicate by stating that it lacks jurisdiction, that by itself would occasion failure on part of the Executing Court to exercise the jurisdiction vested in it.

14. In most recent judgment in "Jini Dhanrajgir & Anr. Vs. Shibu Mathew & Anr." (2023) SCC Online SC 643, the legal position has been reiterated that Rules 97 to 103 of Order XXI of the CPC provide the sole remedy both to the parties to a suit as well as to a stranger to the decree put to execution.

15. In view of the settled legal position, as noted (supra), it was the duty of the Executing Court to issue warrant of possession for effecting physical delivery of the suit land to the decree-holder in terms of suit

schedule property and if any resistance is offered by any stranger to the decree, the same be adjudicated upon in accordance with Rules 97 to 101 of Order XXI of the CPC. The Executing Court could not have dismissed the execution petition by treating the decree to be inexecutable merely on the basis that the decree-holder has lost possession to a third party/encroacher. If this is allowed to happen, every judgment-debtor who is in possession of the immoveable property till the decree is passed, shall hand over possession to a third party to defeat the decree-holder's right and entitlement to enjoy the fruits of litigation and this may continue indefinitely and no decree for immovable property can be executed.

16. In the result, the appeals succeed and are allowed. Accordingly, the judgment and orders dated 07.04.2016 and 04.11.2016 passed in C.R.P No. 152 of 2012 and R.P No. 487 of 2016 respectively by the High Court of Delhi and the order of the Executing Court dated 11.09.2012 are set aside and the Executing Court is directed to execute the decree by effecting delivery of physical vacant possession to the appellant/decree-holder in accordance with the provisions contained in Order XXI CPC. The parties shall bear their own costs.

Headnotes prepared by :
Nidhi Jain

Appeals allowed.