

# Sanjeev Malik vs Amarjit Kaur & Ors on 20 May, 2021

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ EX.F.A. 11/2021

SANJEEV MALIK

..... Appellant

Through: Mr. Tanmaya Mehta, Riya Thomas  
and Apporv Agarwal, Advocates.

versus

AMARJIT KAUR & ORS.

..... Respondents

Through: Mr. Raman Kapur Sr. Advocate with  
Mr. Varun Kapur, Advocate for R-1.  
Mr. Raj Kamal Mr. Kartavya Batra,  
Mr. Aseem Atwal and Mr. Avish  
Bhatti, Advocates for R-2.  
Mr. Vinay Kr. Garg, Sr. Advocate  
with Mr. Parv Garg, Mr. Pawas  
Kulshrestha and Mr. Rikesh Singh,  
Advocates for R-3.

CORAM:

JUSTICE PRATHIBA M. SINGH  
ORDER

% 20.05.2021

1. This hearing has been done through video conferencing. CM APPL. 16673/2021 (for exemption)
2. Allowed, subject to all just exceptions. Application is disposed of. CM APPL. 16674/2021 (for exemption from filing attested affidavits)
3. This is an application seeking exemption from filing duly attested affidavits. Binding the deponent of the affidavits to the contents of the application, the exemption is granted. However, the physical copy of the attested affidavits be filed in the Registry within two weeks after the physical court functioning resumes. Application is disposed of. EX.F.A.11/2021 & CM APPL. 16675/2021 (for stay)
4. The present execution first appeal has been filed challenging the impugned order dated 12th May, 2021, passed by the Id. Additional District Judge (Central), Tis Hazari Courts, Delhi (hereinafter,

"Executing Court") in M.Ex.No.:01/2021, by which the objections filed by the Appellant under Order XXI Rule 97 of the CPC r/w Section 100 to 103 of the CPC, have been rejected. The Court has, by a detailed order directed the Appellant herein/ Objector, to hand over possession of the property in question to the Decree Holders.

5. These proceedings relate to the land bearing no.11/1, Milestone, Mathura Road, Delhi (Khasra Nos.113/1 & 113/2) (hereinafter, "suit property"). The Decree Holders are the Respondents No.1 & 2 who are the legal heirs of late Sh. Mohanjit Singh. Late Shri. Mohanjit Singh was the original owner of the subject property.

6. The litigation has a long history. Sometime in 1964, a partnership was constituted between four parties, by the name M/S Globe Service Station. The said firm was to carry out business of dealing with petroleum products and had entered into a dealership agreement with M/S Esso Standard Eastern Inc., (now known as M/s. Hindustan Petroleum Corporation Limited). The partnership deed was dated 6th November, 1964. After the execution of the partnership deed, a lease deed was executed between the M/S Esso Standard Eastern Inc. and Late Sh. Mohanjit Singh on 21 st November, 1964. The partnership was constituted and reconstituted from time to time, and there were various partners who entered and exited the partnership firm. For the present purposes, the change which took place on 21 st January, 1977 would be relevant i.e., when a dissolution deed was executed between Late Sh. Mohanjit Singh and Mrs. Sunder Kaur. As per the said dissolution deed, all the assets of the firm went back to Late Sh. Mohanjit Singh. On the same very date, another partnership deed was executed between Late Sh. Mohanjit Singh and Mr. Vasdev Mariwala. On 16th July, 1986, Sh. Sanjeev Malik entered the partnership firm, with Mr. Vasdev Mariwala, who is finally stated to have retired on 19th October, 2002.

7. The case of the Appellant is that upon the retirement of Sh. Mariwala, the Appellant became the sole surviving partner of M/s. Globe Service Station and since the land was one of the assets of the said partnership firm, he is the owner of the said property.

8. HPCL (then M/S Esso Standard Eastern Inc) continued to be in possession of the suit property till the year 2000. The original owner Late Sh. Mohanjit Singh filed a suit against HPCL on 3rd May, 2000, pursuant to the lease deed dated 21st November, 1964 as he did not wish to continue the lease agreement with HPCL. Accordingly a suit was filed by the owners bearing CS No. 40/09 titled Mohanjit Singh (Deceased) thr. His LRs v. M/S Hindustan Petroleum Corporation Limited. which was decreed on 9th October, 2015, in favour of the LRs of Late Shri Mohanjit Singh. An execution petition was filed pursuant to the said decree before the Executing Court, bearing M.Ex.No.:01/2021. The Appellants herein, had filed their objections to the execution of the decree, before the Executing Court, under the provisions of Order XXI Rule 97 of the CPC. In the execution proceedings, the Appellant Sanjeev Malik filed objections claiming right, title and interest in the land in question. However, the objections thereto were dismissed by the Executing Court. It is these execution proceedings, arising out of the decree dated 9th October 2015, out of which the present appeal arises.

9. Mr. Tanmay Mehta, ld. counsel appearing for the Appellant, has taken the Court through various clauses of the partnership deed originally constituted in 1964 and the dissolution deeds. He also has taken the Court through the document by which Mr. Vasdev Mariwala became the partner in M/S Globe Service Station i.e. the document dated 21st January, 1977.

10. He vehemently submits that right from inception of the partnership firm, the land where the petroleum pump was being run from, vested in the firm, and the same was an asset of the firm. This according to him is clear from the original partnership deed dated 6th November, 1964, where the land is described as being the "property of the firm", in clause 6 of the agreement. He submits that the expenditure in respect of the said land, i.e. the value of the said land, was also credited to Late Sh. Mohanjit Singh. Thus, the land became an asset of the firm, and since the Appellant is now the sole surviving partner of the firm, he is the owner of the said land.

11. Mr. Mehta further submits that despite the land being stated to have vested back with Late Sh. Mohanjit Singh, vide dissolution deed dated 21st January, 1977, the partnership deed was re-constituted on the same very day, in which it was made clear that the assets of the firm would continue with the firm. Thus, according to him, the land never reverted back to Late Sh. Mohanjit Singh and continued to vest with the partnership firm, and hence the Appellant is entitled to be recognised as the owner of the said land/ suit property in question.

12. Mr. Mehta, ld. Counsel, therefore submits that the dismissal of objections by the Executing Court, without any oral evidence being recorded, would be contrary to the settled principles of law. It is his submission that whenever any issue as to the ownership or title of a property, are raised before the Executing Court, the Executing Court is obliged to take evidence in the matter and not dismiss it summarily, as has been done by the Executing Court in the present case.

13. Mr. Raman Kapur, ld. Counsel, appearing for the legal heirs of late Sh. Mohanjit Singh, i.e. the Decree Holders Respondents No.1 & 2, on the other hand, submits that the case of the Appellant is completely incorrect and is being misrepresented. He submits that in 1964 itself, a registered lease deed was executed between M/S Esso Standard Eastern Inc., (now known as HPCL) and late Sh. Mohanjit Singh, wherein the monthly lease amount was fixed between the said two parties. For a period of 40 years, HPCL has paid rent/lease amount, to late Sh. Mohanjit Singh, and this fact was well within the knowledge of the Appellant. In fact, he relies upon the dealership agreement dated 5th April, 2006, which was signed by Sh. Sanjeev Malik, where it records clearly that the dealer Sh. Sanjeev Malik shall have no right, title or interest in the property in question. This, according to Mr. Kapur, unequivocally establishes that Mr. Malik was all along aware that the title of the land did not vest in the partnership firm.

14. It is further submitted by Mr. Kapur, ld. Counsel, that the suit for possession which was filed in 2000 by late Mr. Mohanjit Singh, was decreed on 9th October, 2015. A decree for possession and mesne profits was passed. The said decree has been upheld right till the Supreme Court. The Appellant herein repeatedly sought intervention/ impleadment in those proceedings. However, on each and every occasion, the impleadment has been rejected by the respective Courts. Mr. Kapur, ld. counsel, finally submits that the Appellant being a dealer of HPCL, and HPCL having agreed to

handover possession of the property to the original lessor, under Order XXI CPC the decree is binding on the dealer and he cannot raise a claim contrary to that of the Judgment Debtor itself.

15. Mr. Vinay Kr. Garg, ld. Sr. counsel, appearing for the HPCL submits that the claim of the Appellant is belied by various facts. According to him, late Shri.Mohanjit Singh purchased the property for more than Rs.19,000/- and he could not have vested the property in the partnership firm for a mere sum of Rs.11,000/-. In any case, the rent has been paid by the Company to late Sh. Mohanjit Singh since 1964. Even mesne profits were fixed by the Supreme Court which were being paid. He submits that the Appellant - Mr. Sanjeev Malik, never claimed any rights in the property all along, and being a dealer of HPCL, he cannot put up a case contrary to that of the company itself. Moreover, it is submitted by Mr. Garg, ld. Senior Counsel, that HPCL cannot be made to suffer in a dispute between the Appellant and the owners inasmuch as HPCL is paying above a sum of Rs.14,00,000/- per month as mesne profits. Thus, he submits that every day's delay is resulting in a huge loss to HPCL. He finally submits that none of the documents, including the documents of dissolution, partnership deed and the other letters etc., relied upon by the Appellant, have been filed in original before the Executing Court which has also been noticed by the Executing Court itself.

16. Heard ld. Counsels for the parties.

17. The question that arises in this case is as to whether the Appellant can stop the execution of the decree at this stage. The following facts emerge from the record as also the submissions made by ld. counsels:

i. That there was a lease deed executed between late Shri Mohanjit Singh and M/S Esso Standard Eastern Inc., (now known as HPCL) dated 21st November, 1964.

ii. That lease amount has been paid by HPCL for more than 40 years. iii. Payment of the lease amount has to be construed to be well within the knowledge of Mr. Sanjeev Malik, who was running the petrol pump at the suit property.

iv. A suit has been filed by Mr. Sanjeev Malik seeking declaration of the ownership/title. The plaint thereof has been rejected on 2nd July, 2019, and the appeal is stated to be pending before the learned Additional District Judge.

v. The Appellant has repeatedly sought intervention/impleadment in suit proceedings, challenging the original decree dated 9th October, 2015. The said impleadment/ interventions have all been rejected. vi. All along from 1964 till 2000, till the suit was filed, the ownership of late Shri. Mohanjit Singh, in the suit property has never been challenged by Mr. Sanjeev Malik, who became a partner in the firm in 1986. Thus, the Appellant has clearly acquiesced to the fact that the ownership of this property vests with late Shri. Mohanjit Singh and now with his legal heirs.

18. The objections have been rejected by the executing court by giving the following findings:

i. The lease deed dated 21st November 1964, was executed in the name of Shri Mohanjit Singh, i.e., the owner of the property, in his individual capacity, and not in the capacity of the partnership firm, or as one of its partners. Even after the death of late Sh. Mohanjit Singh, the lease amount was being paid to his LRs. Further, during the initiation of the lease deed, there was no objection to the said lease deed at all by either partners namely Smt. Surinder Kaur, Sh.

Habhajan Singh and Sh. Manmohan Singh. In fact, it is not the case of the objector that the lease money taken by decree holder was credited in partnership accounts and hence became an asset of the partnership firm. There is no document on record from the books of accounts of the partnership firm to show that the property in question is one belonging to the firm.

ii. As per the sale deed dated 15th September 1964 - transferring the said property from M/s. Delhi Chemical and Pharmaceutical Works to Sh. Mohanjit Singh, all expenses of stamps, registration charges as well as the stamp duty of the sale deed was borne out individually by Sh. Mohanjit Singh. This is the property, which was thereafter leased out to M/S Esso vide the lease deed dated 21st November 1964. iii. As per the reconstituted partnership deed dated 18th November 1970, even if the property is considered as the property of the firm, it was not one of the assets that was transferred to the newly constituted firm, and in fact was explicitly excluded, therefore making it the exclusive property of Sh. Mohanjit Singh, Smt. Sundar kaur and Smt. Harminder Kaur. The intention of the deed clearly shows that the property in question is the exclusive property of the partners and not the property of the partnership firm.

iv. None of the dissolution deeds show that Sh. Mohanjit Singh had surrendered his right, title and interest in the property in question. None of the accounts of the dissolved or newly constituted firms have been produced to show that property belonged to the partnership form. It is the bounden duty of the Objector to produce the documents, however it has failed to do so.

v. As per the dissolution deed of 20th October 1977, the partnership form was dissolved and Sh. Vasdev Mariwala became the sole proprietor of all assets and liabilities of the said firm, however no single document has been produced to show that Sh. Vasdev Mariwala claimed to be the owner of the suit property. In fact, Mohanjit Singh continued to obtain the lease amount from M/S Esso, until 2000, without any objection, until the suit was filed by the LRs of Sh. Mohanjit Singh.

vi. The objector, Sh. Sanjiv Malik, as a newly inducted partner of the firm on 16th July 1986, ought to have known of the ownership status of the suit property, from the book of accounts of the firm. However no objection was ever raised by Sh. Malik as to the lease amount being earned by Sh. Mohanjit Singh, despite him not even being a part of the partnership firm anymore.

vii. There is no adverse possession in this case as the dealership agreement placed on record itself reveals that the possession of M/s Globe Service Station qua the suit property was only on the account of the fact that they were the dealers of HPCL (vide dealership agreement dated 5th April 2006), who were the lessees of the property, the lessor being Shri Mohanjit Singh, co-incidentally a prior partner in M/s Globe Service station.

viii. The Objector has repeatedly sought impleadment in the suit proceedings, pertaining to the suit property, right from the Trial Court to the Supreme Court, however has failed to get any relief. He has also withdrawn his application for impleadment in the Regular First Appeal, on the ground that the suit for declaration was dismissed. The suit for declaration for title of ownership has already been dismissed, and even though an appeal is pending, there is no stay on the dismissal order. Therefore, what cannot be done directly cannot be done indirectly, and hence the objections to the execution of the decree are frivolous.

19. This court is not inclined to grant any interim order restraining the handing over of the property to the Decree Holder/ Respondent Nos. 1 and 2, due to the fact that the Appellant had never objected to the rental amount being paid by HPCL to the owner/decree holder- late Sh. Mohanjit Singh and his LRs, all along since 1964 and even after his entry into the partnership firm since 1986. The Appellant has already made attempts to assert his right to the suit property but has failed on each occasion including when the plaint filed by him seeking declaration was rejected. At this point, only an appeal challenging the said rejection, is pending before the Id. ADJ.

20. Considering the long drawn litigation between the parties, and the fact that the suit of the Appellant itself was rejected, in the opinion of this court, it cannot be said that evidence ought to have been recorded during adjudication of the objections, in the execution proceedings. The executing court has given detailed findings after going through the record. Above all objections, it is the settled position in law that a decree would be binding on any party which claims its right or title or interest, through the judgment debtor, as per the scheme of Order XXI CPC. The Appellant being a dealer of HPCL, the decree is binding on him.

21. Accordingly, the Judgment Debtor is directed to hand over the possession of the suit property in question, to the Decree Holders. However, since the appeal of the Appellant is stated to be pending before the District Court, the Appellant is permitted to seek modification of this order if the appeal is decided in his favour.

22. In order to protect the interest of the Appellant during the pendency of this appeal, as also the appeal filed by the Appellant against the rejection of his plaint, before the Id. ADJ, it is directed that the subject property may be utilised by the Decree Holders in whatever manner they deem it appropriate, however, if they intend to sell the property in question, they shall do so only after seeking prior permission from this Court. At present however, the concerned officer of HPCL shall handover the vacant and peaceful possession to the Decree Holders, in terms of the decree dated 9th October 2015, and the Appellant shall not raise any objections or obstruct the handing over of the

said possession. If required, assistance of the SHO of the concerned area may be sought by HPCL/Decree Holders.

23. Insofar as the direction given to the Judgment Debtor to make a claim against the objector for use and occupation charges is concerned, if HPCL- the Judgment Debtor initiates any proceedings against the Appellant for recovery of the amount paid during the pendency of the objections, no final orders shall be passed in those proceedings until the hearing in the present appeal. If such a proceeding is initiated and reaches the stage of passing of final orders, HPCL is free to approach this Court.

24. Accordingly, the Judgment Debtor/ HPCL is directed to hand over vacant and peaceful possession of the suit property to the decree holder on Monday i.e. on 24th May, 2021 at 11.00 A.M. The Appellant and HPCL are free to take out their own belongings from the suit property in question. However, since a petrol pump was being run at the premises in question whenever either the Appellant or HPCL wish to take out their belongings including the petrol tanks which are embedded in the ground, notice shall be given to the other two parties so that their respective authorised representatives can remain present while the belongings are being removed.

25. It is made clear that the above observations made in this order are prime facie in nature, only for the purposes for deciding the interim application on the question of stay of the impugned order, and shall not be binding on the final decision in this appeal or any other proceedings.

26. It is also made clear that there is no stay on the deposit of costs, which has been ordered by the executing court, and the same shall be paid now within four weeks. CM Appl. 16675/2021 is, accordingly, disposed of.

27. List the appeal on 14th September, 2021. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH, J.

MAY 20, 2021 dj/mw/ak