

Surjeet Kaur Khurana vs Sumitra Devi And Anr on 28 March, 2025

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 28th March

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CM(M) 397/2023, CM APPL. 11754/2023 & CM APPL. 32411/202

SURJEET KAUR KHURANA

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Through: Mr. Praveen Suri with Mr. Sum
Pandey, Advocates.

versus

SUMITRA DEVI AND ANR

.....Re

Through: Mr. Atul T N with Ms. Nazmeen
Ahmed, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner herein was defending a suit for possession and mesne profits. She suffered a decree. When execution was filed against her, she raised objection by filing an application under Section 47 of CPC.

2. The challenge laid in the present petition is with respect to the dismissal of her such application.

3. To understand her grievance, let me, briefly, capture the essential facts which led to passing of decree. I shall be referring to the parties as per their nomenclature before the learned Trial Court and, therefore, petitioner herein shall be referred to as defendant no.1.

4. Defendant no.1 was absolute owner of a property situated in Abadi, known as Ranjit Nagar, Shadipur, New Delhi (hereinafter referred to as "suit property").

5. The plaintiffs approached defendant No.1 for purchase of „under construction entire 2nd floor Flat of said property, with one car parking and one two-wheeler parking space on stilt area (below Ground Floor) and after verbal talks, the deal was finalized for a total amount of Rs.47,00,000/-.

6. Initially, one agreement known as Property Development Agreement was executed between them on 25.12.2011. As per the agreement, the construction of said property was to be completed by 31.05.2012 and in terms of the agreement, the advance payment was also made.

7. A registered Sale Deed was executed between the parties on 23.10.2012 wherein the sale consideration was, however, shown as Rs. 20,00,000/-.

8. Since the sale consideration had been paid and even the registered Sale Deed had been executed and since despite above, the physical possession of the property had not been handed over, the plaintiff was compelled to file a suit for possession, injunction, mesne profits and interest and damages.

9. During the pendency of the abovesaid suit, written statement was filed by the Objector and, based on averments made therein, plaintiff filed an application under Order XII Rule 6 CPC, seeking decree on admissions.
10. Learned Trial Court allowed such application moved under Order XII Rule 6 CPC and decreed the suit in-part and decree of possession was passed in favour of plaintiff and against the defendants with respect to the suit property i.e. entire second floor with agreed parking spaces.
11. Decree sheet was directed to be prepared in terms of such order dated 30.08.2022.
12. Admittedly, suit with respect to mesne profits and damages is still pending adjudication before the learned Trial Court.
13. Defendant No.1 challenged the abovesaid decree by filing Regular First Appeal (RFA) and such appeal i.e. RFA No. 559/2022 was dismissed by this Court on 14.11.2022.
14. Feeling aggrieved, SLP (Special Leave Petition) was also filed by the Objector and such SLP i.e. SLP (C) No. 714/2023 has also been dismissed by the Hon ble Supreme Court as the same was, eventually, withdrawn by the Objector on 24.01.2023.
15. Thus, the decree has already attained finality.
16. The objection petition has been filed by defendant No. 1 Ms. Surjeet Kaur Khurana, and not by a third person claiming any independent title or interest.
17. Her prime contention is that the decree is nullity as Sale Deed in question is illegal, being hit by the provisions of Section 23 of Indian Contract Act, 1872.
18. In order to buttress his contentions, Sh. Suri, learned counsel for objector/defendant no.1 has relied upon agreement dated 25.12.2011 and according to Mr. Praveen Suri, learned counsel for the Objector, such Property Development Agreement is, actually speaking, an Agreement to Sell and has to be considered as an integral part of the Sale Deed as well. It is submitted that as per the Property Development Agreement, the sale consideration was decided as Rs. 47,00,000/- and, for totally inexplicable reasons, the Sale Deed has rather been executed against total consideration of Rs. 20,00,000/-. It is also argued that, besides such Sale Deed being undervalued, the Objector has yet not been paid, the part sale consideration of Rs. 9,40,000/-.
19. The contention of defendant no.1 is that if Sale Deed is read along with the abovesaid Property Development Agreement, it would become clear that the sale consideration had been agreed as Rs. 47,00,000/- and, therefore, in such a situation, the Sale Deed could not have been executed for a sale consideration of Rs. 20,00,000/-. Moreover, such registration is against the provisions of Indian Stamps Act, 1899 and contravenes Section 23 of Indian Contract Act, 1872 and, therefore, the decree in question becomes a nullity. Reliance, in this regard, has been placed upon G.T. Girish vs Y. Subba Raju:

2022 SCC OnLine SC 60.

20. Mr. Praveen Suri, learned counsel for petitioner, submits that irrespective of the circle rates, since there was already an agreement between the parties which indicated the sale consideration as Rs. 47,00,000/-, the Sale Deed should have been of Rs. 47,00,000/- only. He supplements that such deliberate undervaluation, of which defendant No.1 herself is also a party to, has caused loss of revenue and, therefore, the above document is void ab initio, rendering the decree as nullity and non-executable.

21. Evidently, such contention has no merit.

22. It rather looks to be a case where a party is trying to take advantage of its own wrongs.

23. There is nothing which may indicate that defendant no.1 was ever coerced into the abovesaid Sale Deed. There is no allegation to said effect, anywhere at all. Since, she herself, voluntarily, entered into an agreement and even if, there was any agreement prior to that, which was merely described as Property Development Agreement and which even indicated the sale consideration as Rs. 47,00,000/-, by no stretch of imagination, it can be inferred that the Sale Deed should be declared void for showing sale consideration different than what was earlier agreed upon. Fact remains, no such contention was made in this regard when written statement was filed by her.

24. Quite possibly, since the property was being developed and construction was raised, there might have been some contribution by the buyer towards the same as well. I may also highlight right here that, when the suit was filed, it was specifically averred in para 8 of the plaint that the total sale consideration was of Rs. 20,00,000/- which have already been received by defendant No.1. It was also specifically mentioned therein in said para that Rs. 25,00,000/- had been paid by the plaintiffs to defendant No. 1 from time to time for the cost of furnishing and fixture of the suit property and, thus, a sum of Rs. 45,00,000/- had been paid to defendant No.1. When the written statement was filed by defendant No.1, there is, merely, a bald denial to the abovesaid averment and such bald and evasive denial does not serve any purpose whatsoever.

25. The only stand taken by defendant No.1 is that she had received a sum of Rs. 37,60,000/- and, thus, a sum of Rs. 9,40,000/- was due. Such fact would not make decree either void or unexecutable.

26. Moreover, when defendant no.1 had herself purchased the entire property on 16.05.2011, the valuation was shown as Rs. 40,73,392/- for the entire property. In context of Sale Deed in question which is dated 22.10.2012 whereby merely 1/4th share has been sold, the valuation of the entire property has been shown as Rs. 49 lacs and stamp duty has been paid on proportionate 1/4th share only. The valuation, on both such occasions, has been done as per circle rates and, therefore, the aspect of undervaluation does not cut any ice, even otherwise.

27. If defendant no.1 felt that there was some balance unpaid sale- consideration, which according to her assertion is Rs. 9,40,000/-, she should not have signed the Sale Deed. As noted already, she did

not allege about any fraud, coercion or undue influence or total lack of consideration.

According to plaintiff, the alleged balance sale consideration had been paid to her through her employee and defendant no.1 has, baldly, refuted such fact.

28. Thus, the sole endeavour is to pocket the sale consideration and then not to even part with possession.

29. Clearly, the attempt of the Objector seems to be to, somehow, delay the inevitable.

30. This Court is conscious of the limited scope of the appreciation while considering any such Objection Petition filed under Section 47 CPC as well as while entertaining any petition filed under Article 227 of Constitution of India.

31. Reference be made to Pradeep Mehra v. Harijivan J. Jethwa: 2023 SCC OnLine SC 1395 wherein it has been observed that a bare perusal of Sec 47 CPC would show that all questions between the parties can be decided by the executing court, but the important aspect to remember was that these questions are limited to the "execution of the decree". It supplemented that the executing court can never go behind the decree and cannot examine the validity of the order of the court, unless the court's order is itself was without jurisdiction. Reference be also made to Dhurandhar Prasad Singh vs Jai Prakash University: (2001) 6 SCC 534, wherein the Hon'ble Supreme Court has observed that the exercise of powers under Section 47 of CPC lies in a very narrow inspection hole and the Executing Court, can only allow objection under Section 47 CPC to the executability of the decree, if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or law was promulgated making a decree inexecutable after its passing.

32. Admittedly, if there is any material which has potential to indicate that the decree is nullity or void ab initio, such objection can be entertained under Section 47 CPC.

33. Herein, the Sale Deed was duly executed before a Registering Authority and there is nothing to indicate any fraud or coercion. There is also nothing to substantiate the allegation of undervaluation. Merely, because the petitioner/Objector feels that in view of the previously agreed executed agreement, the sale consideration should have been of Rs. 47,00,000/- only, this Court cannot hold that decree would, automatically, become a nullity.

34. The reliance placed upon G.T. Girish (supra) is completely misplaced as in the above said case, the agreement to sell between the parties, expressly and impliedly, was defeating the object of City of Bangalore Improvement (Allotment of Sites) Rules, 1972 and observing that the above said Rules were statutory in nature, it was held that the contract, based on such agreement to sell, was illegal and could not be enforced.

35. No such situation exists in the present case.

36. It is quite palpable that the intention of the defendant No. 1 is to simply thwart the execution of the decree. Such decree has already attained finality and it is settled proposition of law that the Executing Court cannot travel beyond the scope of decree. There is nothing which may indicate that the decree has been passed, without any jurisdiction or that it is based on a document which is void ab initio. Defendant No.1 cannot also be permitted to seek review of the judgment and decree, in the garb of Objection.

37. Keeping in mind the overall facts and circumstances of the case, this Court does not find any reason to exercise its supervisory jurisdiction under Article 227 of Constitution of India, more so, when there is no error apparent on the face of record or, for that matter, any error of law.

38. The present petition, along with all the pending applications, stands dismissed, accordingly.

39. The Execution Petition is, reportedly, lying adjourned sine die. Let there be no further delay and the Executing Court is requested to revive the abovesaid Execution Petition forthwith and to dispose of the same, as expeditiously as possible.

(MANOJ JAIN) JUDGE MARCH 28, 2025/sw/SS