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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 22nd May, 2025***
+ CM(M) 959/2025 & CM APPL. 31514-31515/2025

SHATRUGHAN PRASAD AND ORSPetitioners

Through: Mr. Satpal Singh, Advocate.

versus

RUPAN JAIN AND ORSRespondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioners have taken exception to order dated 04.02.2025 whereby their objections filed under Order XXI Rule 97 CPC have been dismissed.
2. The execution is fallout of one suit filed by plaintiff (Mrs. Rupan Jain) in the year 2005.
3. She filed a suit for declaration, possession and injunction against six defendants and such suit was, eventually, decreed in her favour on 06.01.2016. According to her, she was owner of 1/5th share of the property in question which was situated at Old Rohtak Road, Sarai Rohilla, Delhi and was let out to one Sh. T.N. Bhaskar (predecessor-in-interest of defendant Nos.1 to 3).
4. There was also some dispute between the plaintiff and defendant Nos.4 and 5, which gave rise to another suit i.e. suit for partition. However, such suit for partition was disposed of as settled and a decree was, accordingly, passed on 13.02.1991.



5. All in all, the plaintiff had prayed for a decree of declaration that she continued to be the owner of the suit property and sought injunction against defendant Nos.1 to 3, restraining them from selling, transferring or parting with possession of the suit property and also sought a decree of possession *qua* defendant Nos.1 to 3. Such suit was contested by the defendants and after recording of evidence, the relevant issues were answered in favour of the plaintiff and she was, *inter alia*, held entitled to a decree for possession of the suit property and defendant Nos.1 to 3 were, accordingly, directed to handover the possession of the suit property .

6. Though, one *Regular First Appeal* i.e. RFA No.445/2016 was filed by the concerned Judgment Debtors, fact remains that execution was filed while, clearly, mentioning therein that no stay had been granted by this Court. The current status of such RFA was checked from the website of this Court and it is noticed that such RFA No.445/2016 titled *Pran Nath Bhaskar & Anr. vs. Rupan Jain & Ors.* has already been *dismissed-in-default* and for *non-prosecution* on 26.02.2024.

7. During pendency of the abovesaid Execution Petition, Objection Petition was filed by several Objectors. They claimed that they were in settled possession of the respective portion of the suit property since long time and they were neither concerned with the plaintiff or defendants or, for that matter, with Execution Petition and they learnt about the matter only when some *bailiff* visited the suit property with *warrant of possession*. It was also mentioned that *bailiff* had come at the spot and possession was also forcibly taken from some of them. According to them, they were occupying the suit property which had been constructed long back by them or their ancestors and, therefore, the Decree Holder cannot be allowed to seek



recovery of possession of the suit property by filing the abovesaid Execution Petition. They also contended that Decree Holder had no right to claim the possession, particularly, in view of the fact that they were in possession of the suit property since long.

8. Objection Petition was signed by fourteen persons.

9. The learned Executing Court, after careful analysis of the entire matter and after hearing the stand taken by all the Objectors as well as of the Decree Holder, has dismissed the abovesaid Objection Petition *vide* order dated 04.02.2025.

10. Such order is under challenge.

11. Learned counsel for the petitioners submits that Objection Petition has been dismissed in a summary manner and there is no inquiry. He submits that the inquiry is mandatory in nature and could not have been sidelined and disregarded and, merely, on the basis of the pleadings, the Objection Petition should not have been dismissed.

12. Learned counsel for the petitioner, in this regard, strongly refers to Order XXI Rule 97, which reads as under:-

“97. Resistance or obstruction to possession of immovable property.

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

13. It is also submitted that the Objectors have no remedy except to assert their rights before the learned Executing Court and, in such a situation, when



they were in possession of the suit property for last more than 27 years, their request should not have been summarily rejected.

14. Learned counsel for the Objectors also submits that the Objectors are not occupying the entire suit property and they are occupying hardly 300-400 sq. yards of the area.

15. This Court has gone through the impugned order and it is quite clear that the learned Executing Court has taken note of various important facets of the case in a very judicious manner.

16. The stand of the Objectors is, rather, self-demolishing. In their Objection Petition, they themselves claimed as under:-

“4. That the objectors/ Applicants are in settled possession of their respective portions in the suit property since long time. The objectors/applicants were initially working under Bhasker industry as a employee for loading and uploading of the goods said company Bhaskar Electro Faremic, which has been finally closed in year of 1998 and objectors/applicants had constructed/develop their respective small houses thereafter, for the purpose in a living batter possession long back from their hard earned money and they are living alongwith their family members in the suit property.”

17. Thus, they are, apparently, tracing their possession through their employer *Bhasker Industry*. According to them, they were employees of *Bhasker Industry* and were doing petty job of loading of the goods and after the abovesaid factory was closed, they seem to have constructed their houses over such piece of land and now they seem to contend that their such possession, which is alleged to be long and settled, cannot be disturbed.

18. Quite evidently, they are seeking their right under the Defendants/Judgment Debtors, who were running *Bhasker Industry* at the suit premises. These employees, after the factory was shut down, allegedly



constructed their houses over the suit property and, thus, it cannot be said that their possession becomes a settled or independent one.

19. It also needs to be noticed that in Objection Petition itself, it has been averred by some of the Objectors that physical possession was taken forcibly by *bailiff* from some such Objectors.

20. Reply to the abovesaid Objection Petition was also filed by the concerned Decree Holder and Decree Holder mentioned in her such reply that except for Objector Shatrughan Prasad, the objections filed by others could not be considered as possession of the major portion of the property was already taken by the Decree Holder, pursuant to the execution proceedings.

21. Undoubtedly, the Objectors herein were not party to the main suit but fact remains that the suit property was in possession of the alleged tenants i.e. Sh. Narender Nath Bhaskar, Sh. Pran Nath Bhaskar and Sh. Manmohan Bhaskar. The Executing Court cannot go beyond the decree and since the decree has already attained finality, it is not possible for the Executing Court to, now, see whether the decree could have been passed against those tenants or not.

22. In this regard, learned Trial Court placed reliance upon *Pradeep Mehra vs. Harijivan J. Jethwa: 2023 SCC OnLine SC 1395*, which also, clearly, postulates that Executing Court can only go into the question which are limited to execution of decree and can never go beyond the decree.

23. Quite evidently, the Objectors herein were employees of the tenants and since the Decree against the tenants has attained finality and since the Objectors are tracing their possession through such tenants, it cannot be heard from them that they have any independent right over the suit property.



All these aspects have been, very appropriately, considered by the learned Executing Court. Reference be made to para Nos.11 to 13 of impugned order which read as under:-

*"11. The present decree is for possession against the tenants. The obstructionists claim that initially they were employees of the tenants of the Decree Holder and during the passage of time, they settled in the suit property. Apparently, the obstructionists have not shown any independent right over the suit property except one Kuldeep, who relies upon the sale documents and that too in respect of another Khasra Number. The Order 21 Rule 97 CPC is a provision for removal of person bound by a decree, who does not vacate. It takes into account the situation whether the resistance to possession is offered by the JD or by any other person who claims to be in possession in his own rights and independently of the JD. Here, the reference is taken to the judgment of the Hon'ble Supreme Court in the matter of **Noorduddin v. Dr. K.L. Anand** in which, it was held as under:-*

"8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21 Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree-holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code (Amendment) Act, 1976, right of suit under Order 21 Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in the execution."

*12. The obstructionists have to show their independent right over the suit property. If they derive their right from the Judgment Debtor, then they can not claim independent right. None of the obstructionists have filed any title documents to show any right or title over the suit property. Their averments regarding the collusive decree or decree by fraud to grab the suit property can not be entertained by the executing court. The independent right over the suit property is the primary condition to put any resistance to the possession of the immovable property. Here, reliance is placed upon in the judgment of **Nandkishor Savlaram Malu***



vs. Hanumanmal G. Biyani, (2017) 2 SCC 622 wherein the Hon'ble Supreme Court held as under:-

"24. An employee of a tenant is never considered to be in actual possession of tenanted premises much less in possession in his legal right. Indeed, he is allowed to use the tenanted premises only with the permission of his employer by virtue of his contract of employment with his employer. An employee, therefore, cannot claim any legal right of his own to occupy or to remain in possession of the tenanted premises while in employment of his employer or even thereafter qua landlord for want of any privity of contract between him and the landlord in respect of the tenanted premises.

25. There was, therefore, no need for the appellant to file a separate suit to claim possession of the suit house against Defendant 1 under the general law as he was well within his legal right to execute the decree for eviction from the demised premises in this very litigation not only against the original tenant but also against all the persons who were claiming through such tenant. As mentioned above, the Defendant 1 was such person who was held to be claiming through the tenant being its employee and was, therefore, bound by the decree once passed against his employer tenant."

*13. Further, the long possession of a person deriving title from the Judgment Debtor can not either be considered as the adverse possession or give any right and title over the suit property. A person, who is put into the possession by a tenant, can not be said to have possessed the suit property in a complete hostile manner to the real owner. In the matter of **Brij Narayan Shukla (D) Through LR's vs Sudesh Kumar Alias Suresh Kumar (D) through LR's & Ors. 2024 Live Law (SC) 17**, it was held that the tenant can not claim adverse possession against their landlord since their possession is permissible in nature. The representatives of the tenant derive their title qua the tenant and therefore they have no independent title/right over the suit property. Independent right over the suit property is something more than mere trespass.*

Here, the objectors enter into the suit property through the tenant who was under permissible possession and therefore, the objectors can not claim any independent right over the suit property. Further, the sale documents of the objector Kuldeep does not pertain to the present Khasra Number. He is having sale documents of different khasra number. Therefore, this court can not entertain his objections. Further, he does not have any registered sale deed. Accordingly, the objectors have led to show their independent rights over the suit property. In absence of independent rights, they can not obstruct the possession. However, it is to be noted here that before passing fresh warrants of possession, a court commissioner needs to be appointed to make fresh



measurements as per the site plan attached with the decree to ensure that the persons sitting outside the site plan are not evicted. As a result, the objections of the objectors are devoid of merits and stand disposed of.”

24. It is not mandatory and obligatory for Executing Court to, always, put any such objection to trial. It may be permissible only where the court feels so, in view of stand taken by such objector which conveys some substance. Therefore, summary dismissal does not, automatically, become questionable.
25. As noticed above, the learned Executing Court, and, rightly so, has also given a direction that before passing fresh *warrant of possession*, a Court Commissioner be appointed to take fresh measurement as per the site plan attached with the decree so as to ensure that no person occupying the area, which is not part of the decree, is, unnecessarily, evicted.
26. Be that as it may, this Court does not find any reason to interfere with the impugned order as there is no illegality or perversity in the same.
27. The petition is, accordingly, dismissed.
28. Pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MAY 22, 2025
st/js