



2025:DHC:7850-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 03.09.2025***Judgment pronounced on: 10.09.2025***

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EFA(OS) 11/2022 & CM APPL. 33800/2022

SARVINDER SINGH AND ANR

.....Appellants

Through: Mr. Prateesh Kapur, Senior
Advocate with Mr. Abhishek
Aggarwal & Mr. Shubham
Shankar Gogoi, Advocates.

versus

VIPUL TANDON & ORS.

.....Respondents

Through: Ms. Anita Sahani, Advocate for
R-2
Ms. Pallavi Parmar, Advocate
for R-3 & 4**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. Through the present Appeal, the Appellants [Decree Holders before the learned Single Judge] assail the correctness of order passed on 14.07.2022 [hereinafter referred to as 'Impugned Order'], wherein the learned Single Judge while adjudicating an Execution Petition instituted pursuant to a decree passed under Order XII Rule 6 of the Code of Civil Procedure, 1908 [hereinafter referred to as 'CPC'] proceeded to frame issues in three separate objections and directed restoration of possession/*status quo ante*, to be maintained until the final adjudication of the said objections. It is significant to note that the Respondent Nos.2, 3 and 4 [hereinafter referred to as 'Objectors']



were not impleaded as party(ies) to the suit, notwithstanding the fact that they had purchased the suit property by way of Registered Sale Deeds before the filing of the suit in the year 2015, which was decreed in the year 2016. The operative part of the Impugned Order reads as under:

“43. In view of the above discussion, I am of the view that the issues raised in the present applications can only be decided after evidence is led on behalf of the parties. Therefore, I proceed to frame issues.

EA 535/2018

- I. *Whether the decree dated 3rd May, 2016 in CS(OS) 2453/2015 would be operative against the Objector in respect of the portions of the suit property occupied by him? (OP-Decree Holders)*
- II. *Whether the Sale Deed dated 25th February, 2002 was entered into between the Judgment Debtor and the Objector in a collusive or fraudulent manner? (OP-Decree Holders)*
- III. *Whether the Sale Deed dated 25th February, 2002 is otherwise valid and legally binding? (OP-Decree Holders)*
- IV. *Whether the Objector has acquired right, title and interest in the suit property on the basis of adverse possession? (OP-Objector)*
- V. *Whether the signatures of the mother of the Decree Holders on the Agreement to Sell dated 29th August, 1993, were forged? (OP-Decree Holders)*
- VI. *In the event the Sale Deed dated 25th February, 2002 in favour of the Objector is held to be not valid, whether the Objector is entitled to specific performance. of the Agreement to Sell dated 29th August, 1993? (OP-Objector)*

44. List before the Joint Registrar on 13th September, 2022.

E.A. 165/2019

- I. *Whether the decree dated 3rd May, 2016 in CS(OS) 2453/2015 would be operative against the Objector in respect of the portions of the suit property occupied by her? (OP-Decree Holders)*
- II. *Whether the Sale Deed dated 15th February, 1999 was entered into between the Judgment Debtor _ and the Objector in a collusive or fraudulent manner? (OP-Decree Holders)*
- III. *Whether the Sale Deed dated 15th February, 1999 in favour of*



the Objector is otherwise valid and legally binding? (OP-Decree Holders)

- IV. *Whether the Objector has acquired right, title and interest in the property on the basis of adverse possession? (OP-Objector)*
- V. *Whether Objector was in lawful possession from 1994 to 2018 of the portions of the suit property under a valid tenancy? (OP-Decree Holders)*

45. *List before the Joint Registrar on 13th September, 2022.*

E.A. 166/2019

- I. *Whether the decree dated 3rd May, 2016 in CS(OS) 2453/2015 would be operative against the Objectors in respect of the portions of the suit property occupied by them? (OP-Decree Holders)*
- II. *Whether the Sale Deed dated 15th February, 1999 was entered into between the Judgment Debtor and the Objectors in a collusive or fraudulent manner? (OP-Decree Holders)*
- III. *Whether the Sale Deed dated 15th February, 1999 in favour of the Objectors is otherwise valid and legally binding? (OP-Decree Holders)*
- IV. *Whether the Objectors have acquired right, title and interest in the property on the basis of adverse possession? (OP-Objectors)*
- V. *Whether Objectors were in a lawful possession from 1992 to 2018 of the portions of the suit property under a valid tenancy? (OP-Decree Holders)*

46. *List before the Joint Registrar on 13th September, 2022.*

47. *The Objectors and the Decree Holders to file their list of witnesses within six weeks.*

48. *The evidence by way of affidavit be filed by the Objectors and the Decree Holders within six weeks.*

49. *In light of the aforesaid discussion, I am of the prima facie view that the manner in which the Decree Holders took possession of the properties from the Objectors was ex facie unlawful. The Decree Holders were aware of the sale in favour of the Objectors and also the possession of the Objectors in the aforesaid portions of the suit property. Despite this knowledge, the Decree Holders did not implead the Objectors in the suit filed by them. Even after the decree was passed, no legal notice was served on the Objectors to vacate the property, nor were they made parties in the execution proceedings and straightaway they were dispossessed from the portions of the suit property, of which they had been in a settled occupation for a long*



period of time. Therefore, the Objectors have made out a case for grant of status quo ante and are entitled to the restoration of possession of the aforesaid portions of the suit. Accordingly, it is directed that the possession of the aforesaid portions of the suit property, that was taken by the Decree Holders pursuant to warrants of possession issued by this Court vide order dated 2nd November, 2018 be restored to the Objectors, within a period of four weeks from today.

50. In view of the above, E.A. 176/2019, E.A. 177/2019 and E.A.1395/2021 stands disposed of.”

2. In order to comprehend the issues involved in the present case, the relevant facts in brief are required to be noted.

3. A perusal of the record reflects that, Smt. Nirmal Satyendra Singh [hereinafter referred to as ‘Smt. Nirmal’] was residing at 27, Raipur Road, Civil Lines, Delhi whereas her children were residing abroad. She sold Ground and First floor of the premises in favour of the Father of the objector i.e. Sh. Vikram Badhwar. Sh. Vipul Tandon (Judgment Debtor) [hereinafter referred to as ‘Sh. Vipul’] filed a petition for grant of probate on the basis of a will executed by late Smt. Nirmal, pursuant to which letter of administration was issued on 13.08.1997. Sh. Vikram Badhwar claims that Smt. Nirmal executed an Agreement to Sell in favour of his father on 29.08.1993 upon receipt of Rs.2,00,000/- out of the total sale consideration of Rs.4,41,000/- while agreeing to sell second floor with terrace rights. After the death of Smt. Nirmal, Sh. Vipul executed a Registered Sale Deed in his favour on 25.02.2002, subsequent to the grant of letters of administration in his favour. Thereafter, Sh. Vikram Badhwar constructed the third floor and continued to enjoy peaceful possession.

4. Similarly, two other objections were filed by the heirs of Late



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Sh. Udayvir Viraj and Smt. Shakuntala Srivastava. They claimed that they were inducted as tenants by Smt. Nirmal in two servant quarters and subsequently, they purchased the aforesaid servant quarters by two Registered Sale Deeds executed on 15.02.1999 by Sh. Vipul.

5. On 24.01.2002, the Appellants filed a suit for permanent injunction, which was dismissed on 04.05.2002. On 01.06.2005, the Appellants filed an application seeking revocation of letter of administration/probate, which was dismissed on 24.04.2007 on the ground that it was filed beyond the period of limitation. Thereafter, FAO 242/2007 had been filed by the Appellant No.1, challenging the correctness of order passed on 01.06.2005 which was allowed by this Court on 14.11.2011, while setting aside order dated 24.04.2007 and it was held the application was filed within the prescribed time. In fact, the order granting letter of administration was set aside and directions was issued to decide the matter afresh. In all these proceedings, the Objectors were never impleaded as party(ies), though, they were in possession of the property pursuant to various Registered Sale Deeds. Ultimately, the petition filed by Sh. Vipul was dismissed on 20.03.2014. Sh. Vipul filed an appeal which was dismissed for non-prosecution on 17.07.2018. The Appellants filed a civil suit being CS(OS) 245/2015 against Sh. Vipul seeking possession of the suit property and *mesne* profits for alleged unauthorised occupation. Again, in this suit, the Objectors were not impleaded as party(ies). The aforesaid suit was partially decreed under Order XII Rule 6 of the CPC on 03.05.2016 i.e. within a period of eight months from the date of filing. The Execution Petition was filed to execute the decree in



which warrants of possession were issued and the Objectors, who were not party to the decree, were also dispossessed. It shall be noted here that there was no decree for possession of third floor of the premises which was constructed by Sh. Vikram Badhwar. However, possession of third floor was also delivered.

6. Thereafter, three sets of objections were filed by the Respondents, however, the Appellants/Decree Holders chose not to file a Reply. Ultimately, by way of the Impugned Order, the learned Single Judge deemed it appropriate to frame issues while ordering restoration of possession, till the decision of the objections, which is the subject-matter of appeal before this Court.

7. This Court has considered the submissions advanced by learned counsel for the parties at length and with their able assistance, perused the paperbook and the record of the suit.

8. Learned counsel for the Appellants contends that the doctrine of *lis pendens* can be applied to the probate proceedings and it can be applied, even de hors Section 52 of the Transfer of Property Act, 1882 [hereinafter referred to as 'TPA']. It is also contended that the possession could not have been ordered to be restored to the Objectors in absence of specific provisions under Order XXI Rule 100 of the CPC.

9. *Per contra*, learned counsel for the Respondent No.2 submits that the original agreement to sell in favour of the father of the Respondent No.2 was executed by Smt. Nirmal on 29.08.1993 during her lifetime with respect to the second floor and terrace rights,



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whereas Smt. Nirmal sold the ground and first floor in favour of Sh. Vikram Badhwar's father. Learned counsel further submits that the Objectors were not impleaded as party, despite the fact that the Appellants were aware of the fact that the Objectors are in possession of the property pursuant to sale deeds. It is further submitted that there was no decree for possession with respect to the third floor but the Court Bailiff delivered possession without any decree. Learned counsel submits that in fact, Sh. Vipul colluded with the Appellants and neither properly contested the petition for revocation of letter of administration nor the suit for possession as well he filed an appeal against the decree for possession.

10. Learned counsel for the Respondent Nos.3 and 4 submits that originally two servant quarters were leased in favour of the Respondent Nos.3 and 4, by Smt. Nirmal, and possession of the property as owners pursuant to two sale deeds executed on 15.02.1999 was delivered, though the objectors were in physical possession as tenants. Learned counsel submits that Respondent Nos.3 and 4 were *bona fide* purchasers for consideration and are entitled to be heard. It was highlighted that the Appellants were aware of the facts but neither in the probate petition nor in the suit for possession, the Objectors were made party(ies).

11. This Court has considered the submissions advanced by the learned counsel for the parties, and upon perusal of the relevant documents and judgments placed on record, does not deem it appropriate, at this stage, to express any final opinion on the merits of the case, particularly when the learned Single Judge has only directed



the parties to record evidence on the issues which have been culled out.

12. The matter is presently sub-judice before the Executing Court and the objections filed therein are yet to be decided. However, it is *prima facie* proved that the suit for possession instituted by the Appellants in August 2015 was decreed under Order XII Rule 6 of the CPC in May, 2016. It is evident that Sh. Vipul failed to effectively contest the said suit. Further, neither the Appellants nor Sh. Vipul, disclosed: (a) existence of various sale deeds purportedly executed in respect of the suit property; and (b) the fact that the Objectors are in possession of the property pursuant to the sale deeds. It is also noted that the appeal preferred by Sh. Vipul against the said decree was dismissed for non-prosecution. Even when the letter of administration was revoked and the petition was dismissed, Sh. Vipul, though filed an appeal, failed to prosecute the same. Moreover, it is evident that there was no decree for delivery of possession of the third floor, which was constructed by Sh. Vikram Badhwar, however, the Court Bailiff delivered the possession of the third floor.

13. It is evident that the learned Single Judge has duly considered all relevant aspects of the matter and proceeded to record the following observations:

“21. At this stage, it may be relevant to refer to the evidence on affidavit, filed on behalf of the Decree Holders on 9th December, 2013 in support of the application seeking revocation of letters of administration. Relevant paragraph of the said affidavit is extracted below:

"11. That I say that the Petitioner after obtaining Probate by playing fraud upon the Hon 'ble Court sold some



portions of the property bearing no. 27, Rajpur Road, Delhi-54 which I came to know later. I thereafter through my attorney Mohd. Salim also tiled a Suit (or Permanent Injunction against the petitioner seeking restraining orders to restrain the petitioner (rom selling the remaining property bearing no.27, Raipur Road, which was in his possession and an interim order was passed in my favour but despite the stay, the petitioner sold second floor of the house with terrace to one Mr. Vikram Badhwar and contempt proceedings are pending against him in the Court of Ms. Snigdha Sarvaria, Civil Judge, Delhi. The petitioner has no respect for the law of the land and can go to any extent for his undue advantage. The conduct of the petitioner makes it clear that he had fear in his mind that the real owners of the property can any time come and take possession of the house, therefore he said whatever he could for his self interest. "

22. It is clear from the said affidavit that the Decree Holders were aware in the year 2002 itself that some portions of the property were sold by Vipul Tandon. In fact, it is specifically stated in the said affidavit that Vipul Tandon had sold second floor of the property with terrace to Vikram Badhwar and the Decree Holders had also initiated contempt proceedings in respect thereof. Therefore, when the suit in which the decree under execution has been passed, was filed on 10th August, 2015, the Decree Holders were well aware of the sale in favour of Vikram Badhwar, but yet preferred not to make Vikram Badhwar a party in the said suit.

23. There is merit in the submission of the Objector that no mention in the suit was made with regard to the third floor of the suit property, which was constructed by Vikram Badhwar after purchasing the Second Floor along with terrace rights under the Sale Deed dated 25th February, 2002. Being aware of the sale of the second floor along with the terrace in favour of Vikram Badhwar, the Decree Holders cannot feign ignorance about the existence of the third floor. In fact, the decree in question does not even mention the third floor of the suit property and yet in execution proceedings, the Decree Holders have proceeded to take possession of the third floor of the suit property in an unlawful and mala fide manner. "

14. In view of the aforesaid *prima facie* observations, this Court does not deem it appropriate to interfere with the Impugned Order, while observing that every Court has inherent power to reconstitute possession, if it is *prima facie* found that it was wrongly delivered. At



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this stage, the learned Single Judge has only formed *prima facie* opinion, whereas the final finding will be recorded after the parties are permitted to lead evidence. Hence, there is no substance in the argument of learned counsel for the Appellants that under Order XXI Rule 11 of the CPC, there is no provision for delivery of possession.

15. Hence, finding no merit, the present Appeal, along with the pending application, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 10, 2025/jn/db