



2026:DHC:7868



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of decision: 15.09.2026**# **CNR No. DLHC010612872023**

+ EX.F.A. 7/2024, CM APPL. 8331/2024 (Stay), CM APPL. 8333/2024 (Delay of 30 days in filing the appeal), CM APPL. 8334/2024 (Delay of 21 days in Re-filing the appeal) & CM APPL. 8423/2025 (Stay)

BADAL DEVI

.....Appellant

Through: Mr. Pradeep Kumar Kar and
Ms. M.Vidhya, Advs.

versus

SHEELA DEVI & ORS.

.....Respondents

Through: Mr. Naveen Bansal, Adv.

CORAM:**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**% **JUDGEMENT (Oral)**

1. The present Execution First Appeal, under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, seeks to assail the **Order dated 21.08.2023¹** passed by the **learned Additional District Judge, South District, Saket Courts, Delhi²** in Execution Petition No.3089/2016.

2. Learned counsel for the Appellant submits that the Impugned Order is patently illegal insofar as there is no consideration of the objections that were filed by the Appellant herein. He further submits

¹ Impugned Order

² Executing Court



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that the same is apparent from the fact that the learned Executing Court has proceeded on the premise that if the Appellant had attained possession of the property in the year 2014 and the Judgment Debtor therein had alienated the entire property in the year 2014, there was no plausible explanation as to how the said Judgment Debtor or his wife could have thereafter received summons/notices in respect of the proceedings at the very same premises. He submits that the learned Executing Court has, on this erroneous premise, doubted the Appellant's claim of having acquired possession of the property in the year 2014.

3. It is further submitted that the learned Executing Court has erred in so holding, since, admittedly, the Appellant/Objector herein was only residing in part of the premises, which is 25 Square Yards of the property bearing No. K-I/18/156-A, Sangam Vihar, New Delhi-110080, whereas the Complaint was in respect of property bearing No. K-I-A/156, Sangam Vihar, measuring 60 Square Yards. He, therefore, submits that the Appellant's case was not that the entire property measuring 60 Square Yards had been alienated to him, but that he was in possession of only a portion thereof measuring 25 Square Yards. He submits that, in these circumstances, the mere fact that the summons in the proceedings were received by the Judgment Debtor or his wife at the said premises in the year 2017 could not, by itself, lead to the conclusion that the Appellant could not have been in possession of the aforesaid portion since the year 2014. He, therefore, submits that the conclusion arrived at by the learned Executing Court, on the basis of subsequent service of summons at the premises, is clearly not sustainable.

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4. Per Contra, learned counsel for the Respondents submits that the Appellants are only indulging in forum shopping. He further submits that the jurisdiction of this Court is extremely limited in an Execution First Appeal and that none of the grounds as have been laid down in various judgments are made out in the present case; therefore, this Court should not interfere in the present Appeal.

5. This Court has heard learned counsel for the parties at length and, with their able assistance, gone through the relevant documents. The relevant portion of the impugned Order reads as follows:

“6. The present petition has been filed for execution of a decree of possession, injunction, damages and mesne profit passed by the Hon'ble Delhi High Court dated 29.06.2015. The decree was passed exparte and defendants were directed to vacate and hand over vacant, physical and peaceful possession of the suit property to the plaintiff. Decree for recovery was also passed in favour of plaintiff in the sum of Rs. 1,80,000/- towards arrears of user charges and the Hon'ble Delhi High Court also passed decree in favour of the plaintiff restraining the defendants from creating third party interest in the suit property. The defendants went against the exparte decree in which order was passed on 10.07.2018. They moved an application under Order 9 Rule 13 CPC alongwith application seeking condonation of delay of 675 days in filing the said application.

7. The plaintiff filed execution proceedings to execute the decree subsequent to which the defendants filed the application before the Hon'ble Delhi High Court wherein they pleaded that the defendants acquired knowledge of the decree only in July, 2017 when the Bailiff visited the suit premises and hence, the delay should be condoned and they deserved an opportunity to put forth their defence on merits hence, the exparte judgment and decree should be set-aside.

8. It was observed by the Hon'ble Delhi High Court in IA No.8902/2017 that the defendant was served on 19.11.2014 and when the defendants did not appear despite service they were proceeded exparte on 28.11.2014.

9. The Hon'ble Delhi High Court while dismissing both the



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applications i.e. condonation of delay and under Order 9 Rule 13 CPC observed that the summons were served upon the defendant on 19.11.2014 and again on 31.01.2017 when Bailiff visited the suit property for serving the warrants of possession.

10. The Hon'ble Delhi High Court observed that on both the occasions, defendants acquired the knowledge of the suit and also the decree which was passed against them as the summons were served upon Smt. Kamlesh Nagar, wife of the defendant, as per the report of the Bailiff. Therefore, the court observed that the submission of the defendants that they acquired knowledge on 12.07.2017 was contrary to the court record and could not be accepted. In view of the observations, the Hon'ble Delhi High Court dismissed both the applications i.e. condonation of delay and under Order 9 Rule 13 CPC.

11. The objector in her objections has submitted that she was in possession of the suit property and came to know about the present proceedings on 24.12.2021. She further stated that she had purchased the suit property on 25.10.2014 by way of GPA, Agreement to Sell Will, Affidavit etc. The court observes that all the documents annexed by the objector are unregistered documents. Moreover, the judgment debtor was silent all the time with respect to not being in possession or selling out the suit property to a third person. In fact on 27.11.2018 he even made a statement before the court undertaking to handover the possession of the decretal property to the decree holder within 45 days. Moreover, it has been categorically held by the Hon'ble Delhi High Court that the warrants of attachment were served upon the wife of defendant namely Kamlesh Nagar on 31.01.2017 and had the possession been with the objector on the said date, which the objector submits in her objections that she had purchased the property on 25.10.2014, there was no question of Kamlesh Nagar being served the warrants of possession. Further, the fact that the defendants approached the Hon'ble Delhi High Court for setting-aside the exparte decree in 2017 further goes to show that they were still interested in the suit property.

12. It is a settled principle of law and Section 47 CPC also holds that that the executing court cannot go behind the decree. It must take the decree as it stands for the decree is binding and conclusive between the parties to the suit. Hence, this court cannot go into legality of the decree passed in favour of the decree holder however as far as the objections of the objector are concerned, this court finds it difficult to believe that when summons were served upon the property twice how they were received by the wife of the defendant/defendant when the property had been sold out to the

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objector. The court also finds it hard to believe that when the property had been transferred in 2014 why this fact was never disclosed before the court till the year 2019 and on what basis the defendant even made a statement before the court that he would hand over the property to the decree holder within 45 days of 27.11.2018. All the documents filed by the objector are unregistered and do not inspire the confidence of the court. I, therefore, find no merit in the objections of the objector and the objections stand dismissed with cost of Rs.10,000/- to be paid to the decree holder as the objector has not come to the court with clean hands.”

(emphasis supplied)

6. This Court finds that the entire conclusion of the learned Executing Court is based on the foundational premise that the entire property came to be transferred to the Objector herein and therefore took into account the version of the Judgment Debtor and on that basis held that the version of the Objector herein would not be plausible.

7. This Court finds that the learned Executing Court has principally relied upon the observation that the Judgment Debtor had been served with summons on two occasions, i.e., on 19.01.2014 and 31.01.2017, which had been noticed by the Co-ordinate Bench of this Court. The said fact had been relied upon to negate the objection raised by the Appellant/Objector therein that he had acquired knowledge of the present proceedings only on 24.12.2021. The learned Executing Court has further taken into consideration the fact that the Judgment Debtor had not disclosed before the Court that he was no longer in possession of the suit property or that the same had been sold to a third person and had, in fact, made a statement before the Court undertaking to hand over possession of the decretal property within a period of 45 days.

8. However, this Court is of the opinion that the aforesaid



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reasoning proceeds on the premise that the entire property, which was the subject matter of the decree, had been transferred to the Appellant/Objector herein in the year 2014. The said premise, however, does not appear to be in consonance with the case set up by the Appellant/Objector. The Appellant/Objector has categorically maintained that he had acquired possession only in respect of a part of the premises, measuring 25 Square Yards, whereas the property forming the subject matter of the plaint was stated to measure 60 Square Yards. Thus, the case set up by the Appellant/Objector was not that the entire decretal property had been alienated in his favour, but that only a portion thereof had been transferred to him.

9. In this context, the fact that the Judgment Debtor or his wife had received summons at the premises on 31.01.2017 could not, by itself, have been treated as conclusive of the fact that the Objector could not have acquired possession of the aforesaid 25 Square Yards in the year 2014. The reasoning of the learned Executing Court, that the service of summons upon the Judgment Debtor in the year 2017 was inconsistent with the Appellant/Objector's claim of having purchased the property on 25.10.2014, again proceeds on the assumption that the entire property had been transferred to the Appellant/Objector. The distinction between the 25 Square Yards claimed by the Appellant/Objector and the entire property measuring 60 Square Yards, which was the subject matter of the proceedings, has not been examined by the learned Executing Court.

10. This Court, therefore, is of the view that the learned Executing Court has not considered the objections taken by the Appellant/Objector in their entirety and has proceeded to examine the



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same on the basis of a premise which does not constitute the case set up by the Appellant/Objector. The subsequent service of summons upon the Judgment Debtor may be a circumstance to be considered while examining the objections, but the same, by itself, cannot conclusively determine the Appellant/Objector's claim in respect of the 25 Square Yards allegedly purchased by him. The objections, therefore, require reconsideration by the learned Executing Court after taking into account the specific case of the Appellant/Objector with regard to the extent and identity of the portion claimed by him.

11. This Court is also conscious of the settled principle that an Executing Court cannot go behind the decree and cannot sit in appeal over the decree sought to be executed. However, the objections raised by a third party/Objector claiming an independent right in respect of the property in execution are required to be considered in accordance with law.

12. In the present case, the learned Executing Court does not appear to have examined the objections from the aforesaid perspective. Instead, the conclusion that the Appellant/Objector's claim was not believable has substantially proceeded on the assumption that the Appellant/Objector was claiming the transfer of the entire decretal property. Such an assumption is contrary to the specific case set up by the Appellant/Objector and, therefore, vitiates the consideration of his objections.

13. Insofar as the learned Executing Court has also relied upon the fact that the documents relied upon by the Appellant/Objector were unregistered and did not inspire confidence, this Court is of the view that the said aspect can be considered by the learned Executing Court



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while re-examining the objections. This Court does not consider it appropriate, at this stage, to return any finding on the validity, sufficiency or legal effect of the documents relied upon by the Appellant/Objector, as the same would be a matter for consideration by the learned Executing Court in the first instance.

14. Consequently, this Court is of the view that the impugned Order dated 21.08.2023 cannot be sustained insofar as it rejects the objections of the Appellant/Objector in respect of the 25 Square Yards claimed by him, without considering their objections in their entirety and in the context of the specific case set up by the objector.

15. Accordingly, the present Appeal is allowed. The matter is remanded back to the learned Executing Court for fresh consideration of the objections filed by the Appellant/Objector, particularly in the aforesaid factual context, within a period of one year from today.

16. It is clarified that this Court has not expressed any opinion on the title or ownership claimed by the Appellant/Objector in respect of the aforesaid 25 Square Yards, and all questions in that regard are left open for consideration by the learned Executing Court in accordance with law.

17. The present Appeal is accordingly allowed and disposed of in the aforesaid terms, along with all pending Application(s), if any.

HARISH VAIDYANATHAN SHANKAR, J
SEPTEMBER 15, 2026/rk/va