

(2014) 07 DEL CK 0210
In the Delhi High Court
Case No : CM(M) 682/2014

Atul Chhabra

APPELLANT

Vs

Satpal Gugnani

RESPONDENT

Date of Decision : 21-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 102, 11
Constitution of India, 1950 — Article 227

Citation : (2014) 07 DEL CK 0210

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : A.S.S. Jadaun, Advocate for the Appellant; Preeti Machan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

Caveat No. 592/2014

1. Counsel appears for the caveator. Caveat stands discharged.

C.M. No. 11501/2014 (exemption)

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. (M) No. 682/2014 and C.M. No. 11502/2014 (stay)

3. On 17.7.2014, I have dismissed a petition being C.M. (M) No. 339/2014 which was filed by the stated owners of the suit property to favour the present petitioner/judgment debtor with the following order:-

1. No one appears for the petitioners. This case was first listed on 4.4.2014 when at the request of the counsel petitioners the same was renotified for today

making it clear that there is no stay of the impugned order.

2. Today no one was present on the first call. No one is present even on the second call although it is 4.25 PM.

3. This petition under Article 227 of the Constitution of India impugns the order dated 4.1.2014 by which warrants of possession were issued in favour of the decree-holder.

4. It may be noted that eviction decree has been confirmed right till the Supreme Court.

5. Petitioner nos. 1 and 2 claim to be the co-owners who have sold their rights to petitioner nos. 3 and 4 who are the judgment debtors and consequently objections are being raised to execution of the decree.

6. The Supreme Court in the case of India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others, has held that rights with respect to eviction petition are crystallized as on the date of filing of the petition and subsequent events cannot frustrate the eviction petition and a co-owner has no right to withdraw the consent which was granted at the date of filing of the petition.

7. In view of the above, it is clear that the present petition is an abuse of the process of law, and the same is therefore dismissed.

4. The basic grievance of the petitioners/judgment debtors is that the eviction petition could not proceed because the co-owners/sisters were not parties to the eviction petition.

5. Besides the fact that it is settled law that a co-owner can file an eviction petition, this issue was or ought to have been raised in the main eviction proceedings so that it is decided in the main eviction proceedings, and which eviction proceedings have attained finality right till the Supreme Court inasmuch as the eviction petition had been decreed against the petitioners and confirmed by the dismissal of the SLP of the present petitioners.

6. The provision of Section 11 of Code of Civil Procedure, 1908(CPC) read with Explanation IV thereof deals with the principle of constructive res judicata. All aspects which might or ought to have been urged in the main petition, if not taken as a ground of defence or attack, are deemed to have been decided in the main proceedings and cannot be raised by means of objections in the execution proceedings.

7. Order 21 Rule 102 CPC provides that objections cannot be filed by transferee pendente lite. If objections cannot be filed by persons who are transferees pendente lite, and which is on the principle that a decree binds the defendant and all persons who claim through the defendant, surely the defendant in a suit (and a respondent in the eviction proceedings such as the present petitioner) cannot file objections to execution of the decree.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed with costs of Rs. 10,000/-. Costs be paid within four weeks from today.