

(2010) 07 DEL CK 0053

In the Delhi High Court

Case No : Execution Petition No. 210 of 2007

Diwan Ranjan Sawhney and Another

APPELLANT

Vs

Chhotu Ram (Since Deceased) through LRs and Others

RESPONDENT

Date of Decision : 14-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 2A, Order 21 Rule 10, Order 23 Rule 3, Order 9 Rule 13, 151
Delhi Land Reforms Act, 1954 — Section 33
Delhi Municipal Corporation Act, 1957 — Section 507

Citation : (2010) 07 DEL CK 0053

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : N.S. Vashisth and Rajiv K. Nanda, for the Appellant; Sumit Bansal, Ateev Mathur and Ajay Monga, for the Respondent

Judgement

Manmohan Singh, J.—The present execution petition has been filed by Sh. Bipin Gujral who is alleged to be the assignee of Sh. Diwan Ranjan Sawhney, against the Judgment Debtors praying that direction be issued to the registry to get the sale deed registered in favour of Sh. Bipin Gujral S/o. Sh. Prem Gujral in view of the judgment and decree passed by this Court on 26.08.1998 in CS(OS) No. 1698/1988.

2. Originally the Suit for Specific Performance of agreement to sell dated 19.12.1986 was filed by both Sh. Diwan Ranjan Sawhney and Bipin Gujral against Sh. Chhotu Ram, Sh. Likhi Ram, Sh. Ramesh, Sh. Ishwar and Sh. Amarjit (minor through Smt. Nirmala Devi, mother and natural guardian). It is stated in the Plaint that the Defendants in the Suit entered into an agreement to sell dated 19.12.1986 with the plaintiff whereby the Defendants agreed to sell their agricultural land measuring 20 bighas 2 biswas comprised at Khasra No. 153 min. at the rate of 2,50,000/- per acre to the plaintiffs on the terms and conditions contained in the agreement to sell.

3. The plaintiffs also paid a sum of Rs. 2,00,000/- as earnest money as part payment towards the sale consideration of the said land. The balance amount of Rs. 8,46,890/- was to be paid by the plaintiffs before the Sub-Registrar at the time of attempting the execution and registration of the sale deed. Since the Defendants failed to perform their part, the said Suit was filed before this Court.

4. After filing the written statement by the Defendants, a joint application was filed by the parties under Order XXIII Rule 3 whereby the parties agreed that 9 bighas and 12 biswas of land out of 20 bighas and 2 biswas of land would be transferred to the plaintiffs on the terms and conditions mentioned in the application. It was also ordered that as regards the rest of the Suit Property i.e. 10 bighas and 10 biswas, the Suit would continue.

5. The said application was listed before the court on 20.10.1994 when the following order was passed in I.A. No. 9125/1984:

This is an application under Order 23 Rule 3 read with Section 32 Rule 6 read with Section 151 CPC. The application has been signed by Diwan Ranjan Sawhney, plaintiff No. 1; Bipin Gujral, plaintiff No. 2; Naresh Kumar and Jag Parvesh, legal representatives of deceased Defendants No. 1; Likhi Ram, Defendants No. 2; Ram Chander Defendants No. 3; Ishwar Singh Defendants No. 4. Smt. Nirmala Devi has signed on behalf of Defendants No. 5 and natural guardian. The application is also signed by respective Counsel for both the parties. The affidavits in support of this application have also been by the plaintiffs as well as by the Defendants. The parties are present in person. By virtue of compromise application and the affidavit annexed hereto be marked as "A". I am satisfied that the parties have settled their disputes as contained in Annexure "A".

In view of the averments made in annexure "A" the claim of 9 bighas 12 biswas qua plaintiff No. 2 is settled between the parties. The Suit is in relation to 20 bighas 2 biswas of land. In view of the settlement arrived at between the parties as contained in annexure "A" the plaintiffs shall be entitled to maintain the Suit against the Defendants in relation to the land not covered under the settlement annexure "A". The application is disposed of in terms of this order.

6. The sale deeds were executed by the Defendants in the time prescribed by the Court by the Judgment Debtors in favour of Decree Holder Bipin Gujral in view of the settlement recorded in the suit in respect of land measuring 9 bighas and 12 biswas.

7. It appears from the Suit record that later on the Defendants did not appear before the Court and they were proceeded ex parte on 27.08.1996. Prior to the said date it is recorded by the Joint Registrar that all the documents filed by the plaintiffs are deemed to be admitted under Order XII Rule 2A CPC. The plaintiffs led ex parte evidence by way of affidavit which was filed on 02.09.1996. The Suit of the plaintiffs was decreed on merit with cost on 26.08.1998. It was recorded in the judgment and decree that in case the Defendants failed to execute the

sale deed within four months, the plaintiffs shall be entitled to seek for permission from the competent authorities and on obtaining the same, the Registry of this Court shall get the sale deed executed in favour of the plaintiffs. No application to set aside the decree was filed.

8. Admittedly, the said judgment and decree had not been challenged by the Defendants/Judgment Debtors by filing of an appeal or otherwise to set aside the judgment and decree on moving of an application under Order IX Rule 13 Code of Civil Procedure, 1908.

9. Therefore, the present execution has been filed by the Decree Holder seeking the direction to execute the sale deed by the registry of this Court in favour of the Decree Holder.

10. The notice of the execution was issued to the Judgment Debtors on 14.08.2007 for 25.09.2007. Four weeks time was granted to the Judgment Debtors to file the objection, if any. It appears from the record that despite of various opportunities the Judgment Debtors did not filed the objections as directed by the Court.

11. The matter was referred to the Court on 01.02.2008 when final opportunity was granted by the Court to file the objection by the Judgment Debtors within four weeks failing which the right to file the objection would be closed. Despite of the said order, the objections were not filed by the Judgment Debtors nor the Judgment Debtors appeared before the Court when the matter was listed on 20.03.2008.

12. Time was granted to the Decree Holder to calculate the balance sale consideration to be deposited in Court in respect of parcel of land measuring 10 bighas 10 biswas comprised in Khasra No. 153 min. situated within the revenue estate of Village Bijwasan in the Union Territory of Delhi. Direction was also issued to the Decree Holder to file the site plan of the parcel of land in question along with the demarcations for the purposes of identification before the next date of hearing.

13. Thereafter the Decree Holder has filed the detail of the calculation of consideration with respect to the remaining land of 10 bighas and 10 biswas comprising Khasra No. 153 min. and plan of the property as per the office of the Deputy commissioner (SW), Delhi as well as the site plan of the land. Decree Holder Mr. Bipin Gujral was also filed an affidavit in this respect. As per the calculation details, the total amount payable for the entire parcel of land is Rs. 5,46,890/-. It is also stated in the affidavit that against the said amount a sum of Rs. 2,00,000/- was paid at the time of signing of the agreement and sum of Rs. 3,00,000/- was paid by cheque dated 26.12.1994 against the sale of balance land by the Judgment Debtor. Thus, after deduction of Rs. 5,00,000/- it leaves the balance of Rs. 46,890/- to be paid at the time of registration of sale deed.

14. As per the judgment, the Decree Holder was also required to obtain

permission under Delhi Land (Restrictions on Transfer of Land) Act, 1972 and the Decree Holder applied for the said permission which was refused and he was informed to file two separate applications of 5 bighas 5 biswas each as the land in the revenue records stood in certain other names along with the names of the Judgment Debtors as half share each between the Judgment Debtors and the other parties.

15. The Decree Holder accordingly filed two separate applications and also filed before the authority a copy of the order in Probate Case No. 359/1997 whereby the petitioners in that case (being the Judgment Debtors along with family members) were held entitled for letter of administration in respect of the property. The office of the Deputy Commissioner (SW) Kapashera, New Delhi has vide order dated 24.11.2008 granted necessary permission as applied for. The said order supplied to the Decree Holder on 26.11.2008 has been filed along with the affidavit.

16. Admittedly, in the present case, no objection u/s 47 or under Order XXI of the CPC for determination of the rights and title of the suit property were filed by the Judgment Debtors. As already mentioned earlier the right of filing the same was closed vide order dated 01.02.2008.

17. Later on, an affidavit was filed by one of the Judgment Debtors namely Jag Pravesh S/o Sh. Chhotu Ram at its own raising the following points in the affidavit :

(a) That Bipin Gujral, who is the assignee of Diwan Ranjan Sawhney without placing on record any assignment cannot be permitted to seek the execution of the decree.

(b) That the agreement to sell dated 19.12.1986 was executed in respect of Khasra No. 153 min. and the decree was also passed in respect of the said property. No objection certificate issued by the office of Deputy Commissioner (SW) is in respect of Khasra No. 153/3 min. The said document has been obtained by the Decree Holder by fraud.

(c) The Decree Holder is seeking direction for execution of the sale deed in respect of different piece of agricultural land and not in respect of Khasra No. 153 min. which was the subject-matter of the agreement to sell. Therefore, there are two separate Khasra numbers, therefore, Decree Holder is entitled for the relief claimed for.

(d) That the execution of sale deed sought by the Decree Holder is in violation of the provisions of Section 33 of the Delhi Land Reforms Act.

(e) That no objection obtained by the Decree Holder on the basis of the letter of administration granted in Probate Case No. 359/1997 is not in respect of the land which is the subject-matter of the agreement to sell, therefore, the said order produced by the Decree Holder is with malafide intention

18. The Decree Holder filed the reply affidavit to the affidavit filed raising the objection that the said affidavit filed by the Judgment Debtors cannot be looked into and should be deleted from the record on the ground that by order dated 01.02.2008, the right to file the objections was closed. But at the same time the Decree Holder has given reply to the objection raised by the Judgment Debtors.

19. During the pendency of the execution, the Judgment Debtor No. 2 Sh. Likhi Ram had expired on 18.04.2009 leaving the legal heirs namely Smt. Harmandi Devi (widow), Sh. Umesh Rana and Sh. Durgesh Rana (both sons of the Judgment Debtor No. 2). The said legal representatives were brought on record by order dated 28.10.2009. Subsequently, the legal representatives of the Judgment Debtor No. 2 filed the objections u/s 47 of the CPC inter alia raising the verbatim objections as mentioned in the affidavit of Sh. Jag Pravesh one of the Judgment Debtors. Learned Counsel for the Decree Holder has argued the filing of the objections by the legal representatives of deceased Judgment Debtor No. 2 and submitted that the same are not maintainable as none of the Judgment Debtors had originally filed the objection.

20. It is pertinent to mention that in view of settlement, the Judgment Debtors executed the sale deeds dated 28.12.1994 in favour of Sh. Bipin Gujral admitting that he is the Vendee, Successor, Legal Representative, Administrator, Executor, Nominee and Assignee. In the sale deeds the Judgment Debtors have acknowledged that the Vendee along with Diwan Ranjan Sawhney had entered into an arrangement for purchase of above mentioned land which is the subject-matter of the Suit. It was also acknowledged by the Judgment Debtors that a compromise has been arrived at between the parties in respect of the land measuring 9 bighas and 12 biswas in Khasra No. 153/1 min. Neither execution of the sale deeds were not disputed by them nor the same is challenged by the Judgment Debtors in any proceedings.

21. In the sale deeds, it is specifically mentioned that the vendors/Judgment Debtors are joint and absolute owner/bhoomidar in possession of agricultural land measuring 9 bighas and 12 biswas bearing Khasra No. 153/1 min situated in the Village Bijwasan. As alleged by the Decree Holder, the Judgment Debtors had also obtained the necessary permission for the sale of 9 bighas 12 biswas.

22. During the pendency of the present execution proceedings, the Decree Holder has filed the following documents:

- i. Sale deeds with respect to 9 bighas 12 biswas in Khasra No. 153
- ii. Receipts.
- iii. Agreement between Diwan Ranjan Sawhney and Bipin Gujral.
- iv. Letter to Mr. Bipin Gujral from the vendors.
- v. Death certificate of Diwan Ranjan Sawhney.
- vi. Site plan of Khasra No. 153 before bifurcation.

vii. Site plan of Khasra No. 153 after bifurcation.

23. The Learned Counsel for the Judgment Debtor, Mr. Bansal has raised objections on filing the documents by the Decree Holder and has contended that these documents are not forming part of the Trial Court Record, therefore, the same cannot be looked into. Mr. Vashisth, Learned Counsel for the Decree Holder, on the other hand, submits that these documents have been filed mainly for the purpose of only reference of making payment of Rs. 5,00,000/- to the Judgment Debtors on 26.12.2004. The Decree Holder has also produced the original receipts executed by the Judgment Debtors for the sale of balance land of 10 bighas and 10 biswas. It is pertinent to mention that the said factum of making the payment was also mentioned in the affidavit of evidence filed by Sh. Bipin Gujral before the Trial Court which reads as under:

14. I say and submit that on 27.8.94 an agreement was executed between me and plaintiff No 1 Mr. Dewan Ranjan Sawhney whereby he has given up his right to acquire the property to me. I say and submit that subsequent to the above Order dated 20.10.1994 a sale deed was executed by the Defendants in my favour on 28.12.1994. However, the Defendants failed to execute the sale deed in respect of the balance land of 10 bighas and 10 biswas for which the suit continued. I say and submit that thereafter the Defendants received another amount of Rs. 3 lakhs from me for the 10 bighas and 10 biswas of land. I say that the Defendants in all the defendants have received Rs. 5 lakhs from me towards the sale of the balance agricultural land admeasuring 10 bighas and 10 biswas. I have, therefore, performed my part of the obligation by not executing and it is only the Defendants who have failed to perform their part of obligation by not executing a sale deed in my favour for the balance 10 bighas and 10 biswas of land. Only an amount of Rs. 46,890 is due and payable by me to the defendants.

24. The Decree Holder has also produced the original receipts issued by the Judgment Debtors and submits that the Judgment Debtors had executed the receipts and agreement pertaining to payments towards the sale of balance land of 10 bighas and 10 biswas of land in Khasra No. 153 situated in Village & Post Office Bijwasan, Tehsil Mehrauli, New Delhi.

25. Since the Judgment Debtors have failed to file the objections, further, the receipt of the amount of Rs. 5 lac is not disputed by them in any of the pleading, thus, the objection raised by the Counsel is without any merit. The Judgment Debtors had also not challenged the final judgment passed by this Court on 26.08.1998 which was decided on merit.

26. As far as assignment of rights by Diwan Ranjan Sawhney, (who was plaintiff No. 1 in the Suit) is concerned, during the pendency of the suit Diwan Ranjan Sawhney had assigned his rights in favour of the Bipin Gujral, Decree Holder herein by way of an agreement. The said fact was mentioned by Decree Holder in his affidavit which was filed by way of evidence in the suit proceedings. The

factum of assignment of share of Diwan Ranjan Sawhney in favour of Bipin Gujral was specifically mentioned in the affidavit which was filed in the Suit proceedings as evidence in support of the case of the Decree Holder. Further, the Judgment Debtors had knowledge about the assignment of the land in favour of Bipin Gujral at the time of execution of sale deeds in his favour.

27. As far as other objections about the bifurcation of khasra number are concerned, it is a matter of fact that the Judgment Debtor never raised any objection to their holding of 20 bighas and 2 biswas in Khasra No. 153 min. in Village Bijwasan nor the Judgment Debtors have pointed out any different Khasra number of land of the 10 bighas and 10 biswas. From the documents produced by the Decree Holder it appears that the 20 bighas and 2 biswas comprises of 9 bighas and 12 biswas in Khasra No. 153/1 min. which was the subject matter of the compromise arrived between the parties and the balance 10 bighas and 10 biswas in Khasra No. 153/3 min are the part of the same Khasra No. 153 min. In case, two bifurcated Khasra Nos. 153/1 min. and 153/3 min. are not the part of Khasra No. 153 then why the Judgment Debtors had executed the sale deeds in favour of Decree Holder in respect of Khasra number 153/1 min in compliance with compromise decree. In case two Khasras 153 and 153/3 min. are different as alleged by the Learned Counsel for the Judgment Debtors but they are not able to explain before this Court as to where is the remaining land of 10 bighas and 10 biswas situated and under which Khasra number.

28. As far as the names of transferee are concerned, the same are as per the revenue record. Admittedly, the Judgment Debtors did not file any transfer document, therefore, the Decree Holder had filed the same for the necessary permission. The Learned Counsel for the Decree Holder has also made the statement that no notice has been received by the Decree Holder of challenging of no objection certificate dated 24.11.2008.

29. As regards the objection of violation of Section 33 of Delhi Land Reform Act is concerned, I accept the submission of the Learned Counsel for the Decree Holder that as the sale deed is pursuant to the decree of this Court and as per the agreement to sell dated 19.12.1986 wherein the Judgment Debtor had stated that they will transfer the remaining land, therefore, the sale deed will not be in violation of the said provision. This issue is also resolved in W.P.(C) No. 4143/203 titled as Smt. Indu Khorana v. Gram Sabha and Ors. passed by the Division Bench of this Court wherein it was held that once rural area is urbanized by issuance of notification u/s 507(a) of the Delhi Municipal Corporation Act, 1957, provisions of Delhi Reforms Act will cease to apply. Similar view was taken by the Single Judge of this Court in the case of Trikha Ram v. Sahib Ram 69 (1997) DLT 749 at 754 para 12.

30. Now coming to the question of filing the objections by the legal representatives are concerned, I am of the considered view that in case the objections are not filed by the main Judgment Debtors, the objections filed by the legal representatives subsequently after the death of one of the Judgment

Debtors are not maintainable. Section 50 of the CPC mandates as under:

50. Legal representative? (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

31. It is very clear from the above, the objections by the legal representatives at this stage cannot be entertained. Similarly, as far as an affidavit of Jag Pravesh is concerned, no doubt the provisions of Section 47 and Order XXI Rule 10 CPC provides that all questions (including relating to right, title and interest of the property) arising between the parties in the proceeding upon filing of an application under Rule 97 or Rule 99 shall be determined by the court dealing with the application. There is a complete procedure under these provisions. In the present case, no application or objections raised by the Judgment Debtors were produced before this Court, the right of filing of the objections, admittedly, was closed. Thus, the contentions of the Judgment Debtors have no force. Further, the suit for remaining land in question was decided on merit and no challenge to the same was made by the Judgment Debtors before any forum.

32. Even otherwise on merit, it appears that affidavit/objections filed by legal representatives of Likhi Ram are without any merit. Hence the same are rejected being false and frivolous and have been filed with mala fide intentions in order to delay the proceedings.

33. Under these circumstances, the present execution petition is allowed.

34. The Joint Registrar (Original) is appointed as an officer of this Court to get the sale deed executed in favour of the Decree Holder Bipin Gujral in respect of remaining land of Khasra No. 153/3 min part of khasra No. 53, situated in Village and Post Office Bijwasan, Tehsil Mehrauli, New Delhi as shown in the bifurcation plan filed by the Decree Holder within the period of 8 weeks from today subject to his depositing the balance consideration of Rs. 46,890/- within a period of two weeks by pay order in favour of Registrar General of this Court who shall keep this money for being paid to the Judgment Debtors.

35. The Decree Holder shall pay Rs. 5,000/- to the concerned Officer as his fee who will visit to the Sub-Registrar office along with Bipin Gujral after the completion of all relevant papers and formalities for the purpose of execution of the sale deed.

36. The present execution petition is disposed of with these directions. No cost.