

**(1971) 02 DEL CK 0020**

**In the Delhi High Court**

**Case No :** Ex. Second Appeal No. 96 of 1966

Hafiz Rahim-ud-Din and Others

APPELLANT

Vs

Tirlok Singh

RESPONDENT

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**Date of Decision :** 17-02-1971

**Acts Referred:**

**Citation :** AIR 1971 Delhi 319 : (1972) 1 ILR Delhi 880 : (1971) RLR 39

**Hon'ble Judges :** P.N. Khanna, J

**Bench :** Single Bench

**Advocate :** A.C. Sehgal, for the Appellant; H.R. Khanna, for the Respondent

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## **Judgement**

1. Tirlok Singh, respondent held leasehold rights in a plot of land under the Delhi Improvement Trust. On March 20, 1947 he conveyed his said rights to the appellants, Hafiz Rahim Udin and others, by a registered deed of sale. The appellants were also given possession of the land. In or about September, 1947 when there were communal riots and disturbances, at the time of the partition of the country, the appellants appear to have lost control over the said land, and could not manage and retain physical possession thereof. The respondent at that time took back the possession of the said plot. On January 29, 1958, the appellants filed a suit for possession against the respondent in respect of the suit land. This suit was decreed on March 30, 1959. Respondent's appeal was dismissed on October 17, 1961.

2. On November 1, 1962, the appellants took out execution of their decree against the respondent who filed his objection thereto. According to him the decree had become inexecutable, inter alia, on the ground that the lease-hold rights had been cancelled by the Delhi Improvement Trust, the paramount landlords, on October 24, 1962. The decree-holder appellants were said to have thus lost all rights in the said land. The appellant-decree-holders denied the alleged cancelling of the lease-hold rights or the inexecutability of the decree. The executing Court found that the lease in favor of the decree holder appellant had been cancelled by the Delhi Development Authority, and, Therefore, there

was no right or interest left with the decree-holder in the land in suit. The decree as such was held to have become inexecutable. Respondent's objections were accepted and the execution application was dismissed. The learned Additional District Judge concurred with the executing Court in appeal, which was dismissed. The appellants have come up to this Court in second appeal.

3. The learned counsel for the respondent contended that the executing Court can take notice of the subsequent events. The decree if executed would result in infringement of the law as occupation of the appellants would be unauthorised occupation u/s 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act.

4. The entire approach of the Courts below, as of the learned counsel for the respondent is wrong. The executing Court cannot go behind the decree. So long as the decree stands, it has got to be executed. In *Singaravelu alias Singaram Chettiar v. Pattammal* Air 1949 Mad 429, it was held that a decree for maintenance passed against a Hindu husband confers on the wife an unconditional and absolute right of maintenance, the executing Court in execution proceedings cannot enquire into an objection by husband that the wife has forfeited her right under the decree owing to her having led an unchaste life subsequent to the passing of the decree. The husband's remedy is by way of a separated suit and not by way of an objection to the execution of the decree. (Also see *R. Viswanathan v. Abdul Wajid* Air 1952 Mys 94 and *Girdhari Lal v. Madan Lal* 1968 Delhi Lt 435.

5. The Supreme Court in *Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others*, , observed : - " A Court executing a decree cannot go behind the decree between the parties or their representatives. It must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties. When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of such a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed, an objection, in that behalf may be raised in a proceeding for execution. Against when the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. Where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction".

6. Cancellation of the lease-hold rights is a matter between the Delhi Development Authority and the appellants. The respondent cannot take shelter under the same. He, on the other hand, is bound by the decree and is liable to

comply with its directions, until the same is varied in appropriate proceedings. The action of the Delhi Development Authority does not give any right to the respondent in derogation of the decree passed against him by a competent Court. The executing Court was under the circumstances, wrong in entering into an enquiry to find out whether the lease-hold rights in favor of the appellants were still in existence or had been cancelled. The executing Court had nothing to do with the same. The objections, under the circumstances, could not be entertained. Under the circumstances the orders of the Courts below cannot be sustained. This appeal Therefore, is accepted. The order under appeal and that of the executing Court are set aside and the execution application of the appellants is restored. The executing Court will now proceed with the execution in accordance with law. In the circumstances, there shall be no order as to costs.

7. Appeal allowed.