
(1980) 11 CAL CK 0002

In the Calcutta High Court

Case No : Appeals No's. 170-72 of 1979 and 335 (A) of 1976

L. Mullick and Co. and Others

APPELLANT

Vs

Binani Properties P. Ltd. and Others

RESPONDENT

Date of Decision : 14-11-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, Order 29 Rule 1, 146
Companies (Court) Rules, 1959 — Rule 84
Companies Act, 1956 — Section 394, 394(2), 559
West Bengal Premises Tenancy Act, 1956 — Section 13(1)

Citation : (1983) 53 CompCas 693

Hon'ble Judges : Amarendra Nath Sen, C.J.; Murari Mohan Dutt, J

Bench : Division Bench

Advocate : Aninda Mitra, for the Appellant; S.B. Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Dutta, J.—These appeals have been preferred by the tenant and the sub-tenants of the disputed property, being premises No. 81, Netaji Subhas Road, Calcutta, and they arise out of a proceeding for execution.

2. On August 10, 1966, Binani Properties P. Ltd., since dissolved, obtained a decree for eviction of the appellant from the disputed property on the grounds of default in payment of rent and reasonable requirement for building and rebuilding, in Suit No. 800 of 1959 filed in this court. The said decree was affirmed in Appeal No. 226 of 1966 on May 2, 1968. An application for leave to appeal to the Supreme Court was dismissed on July 22, 1968, and an application for special leave to the Supreme Court was also dismissed on November 4, 1968. The decree-holder, Binani Properties P. Ltd., put the said decree into execution on October 10, 1969. During the pendency of the said execution case, the company court by an order dated September 17, 1970, sanctioned a scheme of amalgamation of Binani Properties P. Ltd., the decree-holder, with Binani Investment Co. P. Ltd., and ordered for the transfer of the entire assets and

properties of the Binani Properties P. Ltd. to Binani Investment Co. P. Ltd. u/s 394 of the Companies Act, 1956. It was further ordered that the latter company, that is, the transferee-company, would be entitled to continue all pending proceedings initiated by or in the name of Binani Properties P. Ltd. It was discovered by the Binani Investment Co, P. Ltd., with which the original decree-holder, Binani Properties P. Ltd., was amalgamated, that through mistake the disputed property, being the said premises No. 81, Netaji Subhas Road, Calcutta, was omitted to be included in the schedule of the order dated September 17, 1970, sanctioning the scheme of amalgamation. An application for rectification was moved and by an order dated April 10, 1973, the order of amalgamation was rectified by including the disputed property in the schedule of the said order. The application of the tenant-judgment-debtor praying for setting aside of the said order of rectification was dismissed on July 20, 1970.

3. Thereafter, it appears, the said Binani Investment Co. P. Ltd. was amalgamated with another company, namely, the respondent, the Metal Distributors Limited, by an order dated December 21, 1975, of the Bombay High Court u/s 394 of the Companies Act, 1956, w.e.f. January 1, 1975. At the time the said order of amalgamation was made by the Bombay High Court, an appeal was pending in this court preferred by the tenant-judgment-debtor against the order of execution dated November 20, 1970, made by S. C. Ghose J. on the application of the original decree-holder, Binani Properties P. Ltd. In the said appeal, the Metal Distributors Ltd. was added as a party. The said appeal was allowed by the appeal court by its order dated November 20, 1970 (sic). The appeal court set aside the order of S. C. Ghose J. dated November 20, 1970, and granted liberty to the Metal Distributors Ltd. to take steps for continuing the execution proceedings filed by the original decree-holder, Binani Properties P. Ltd., by substitution or otherwise. Thereafter, in terms of the order of the appeal court which was affirmed by the Supreme Court, the Metal Distributors Ltd. made an application before the executing court praying for continuing the execution proceedings. On February 6, 1970 (sic), S. C. Deb J. allowed the said application and granted leave to the Metal Distributors Ltd. to continue the execution proceedings without prejudice to the rights and contentions of the parties. The learned judge also gave directions for the filing of affidavits.

4. The judgment-debtors raised various objections to the execution of the decree, particularly at the instance of the Metal Distributors Ltd. All the said objections were overruled by S. K. Roy Chowdhury J. by his judgment dated April 18, 1979. The learned judge by his said judgment directed execution of the decree in terms of col. (10) of the tabular statement dated October 10, 1969, and also directed the grant of police help for the purpose of recovery of possession of the disputed property. Hence these appeals.

5. The first point that has been urged by Mr. Aninda Mitra, learned counsel appearing on behalf of the appellants, is that the transferee of the decree, namely, the respondent, Metal Distributors Ltd., not having followed and

complied with the provisions of Order 21, Rule 16 of the CPC, the respondent is not entitled to execute the decree for possession. In elaborating the point, the learned counsel submits that the right to execute a decree is a statutory right, and only the decree-holder can execute the decree, even after the transfer of the same and until and unless the name of the transferee is brought on the record as the decree-holder in accordance with the provisions of Order 21, Rule 16. It is contended that the said provision also applies to a pending execution, and if there be a transfer of the decree, the transferee may continue the execution, provided his name is brought on the record by substitution in place of the name of the transferor in the tabular statement. It is submitted that in the application under Order 21, Rule 16, besides other prayers, there must be a prayer for substitution of the name of the transferee in place of the name of the decree-holder in the tabular statement. It is pointed out that as there has been no order for substitution of the respondent's name in the tabular statement, a mere permission to continue the execution proceedings granted in favour of the respondent, Metal Distributors Ltd., will not enable the respondent to execute the decree or proceed with the execution initiated by the decree-holder, Binani Properties P. Ltd.

6. As to the above contentions of the appellants, the first question that requires consideration is whether there has been a transfer of the decree for possession in favour of the respondent, the Metal Distributors Ltd. The first order of amalgamation made by this court does not mention the decree, nor is there any such mention in the scheme of amalgamation. Similarly, there is no mention of the decree for possession in the order of amalgamation of the Bombay High Court.- So it is difficult to hold that the decree for possession has been transferred in favour of the respondent. One of the contentions of the appellants in these appeals is that there has been no transfer of the disputed property, being premises No. 81, Netaji Subhas Road, Calcutta, under the said order of amalgamation of this court, and that the disputed property had vested in the State of West Bengal by escheat. This contention will be considered later. But we may, for the time being, proceed on the assumption that under the orders of amalgamation, the disputed property has been transferred to the respondent. In other words, while the respondent became the owner of the disputed property, the decree was not transferred to it. Therefore, as there was no transfer of the decree by assignment or by operation of law, the provision of Order 21, Rule 16 is not, on the face of it, applicable.

7. The respondent, the Metal Distributors Ltd., having acquired title to the disputed property may continue the pending execution against the appellants as a person claiming under Binani Properties P. Ltd., the original decree-holder, under the provision of Section 146 of the CPC. Section 146 provides : " Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him." It is, however, said that Section 146 only enables

initiation of proceedings, and not continuation of any proceeding. In *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, , a similar contention was made before the Supreme Court regarding the continuation of a pending appeal by the assignee of the property by "virtue of Section 146. In overruling the said contention, the Supreme Court observed (at p. 397):

" The right to file an appeal must therefore be held to carry with it the right to continue an appeal which had been filed by the person under whom the applicant claims, and the petition of the appellant to be brought on record as an appellant must be held to be maintainable u/s 146."

8. In a recent decision of the Supreme Court in *Zila Singh and Others Vs. Hazari and Others*, , the same view has been reiterated. The above principle as laid down by the Supreme Court is also applicable for the continuation of a pending execution proceeding by the person claiming under the original decree-holder u/s 146.

9. Counsel for the appellants has, however, placed strong reliance on a Full Bench decision of the Madras High Court in *Venkatachalam Chetti Vs. Ramaswami Servai (dead) and Others*, . In that case, it has been laid down that by reason of Section 146 and Order 21, Rule 16 of the CPC, the legal representative of a decree-holder who dies during the pendency of an execution petition can be substituted in the execution petition and be allowed to continue it. It is not obligatory on him to file a fresh application for execution. The same view has been expressed in *Harsukhrai M. Doshi and Another Vs. Ahmad Kareem and Another*, ; *Shankar Hari v. Damodar Vyankaji*, AIR 1945 Born 380; *Kacharabhai Lehrabhai Vs. Kacharabhai Vadilal*, and *Annada Prasad Mitra Vs. Sushil Kumar Mandal*, . In *Bajirao Domaji Shreerang and Others Vs. Kashirao Ajabrao Deshmukh*, , and in *Radhakisan v. Daudas*, AIR 1935 Nag 230, also relied on by the appellants, it has been held that the transferee of a decree cannot execute it until his name is substituted in place of the original decree-holder.

10. On the basis of the above decisions, it has been urged on behalf of the appellants that as the name of the respondent, the Metal Distributors Ltd., has not been directed to be substituted in the tabular statement in place of the original decree-holder, a mere permission to continue the execution proceedings granted in favour of the respondent is illegal and in- valid and the respondent is not entitled to proceed with the execution by virtue of such permission. The argument, in our opinion, does not carry conviction. Neither Section 146 nor Order 21, Rule 16, is a provision for substitution. In view of the decision of the Supreme Court in *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, , referred to above, the respondent being a person claiming under the decree-holder is entitled to proceed with the execution u/s 146. Indeed, the respondent made an application for permission of the court allowing the respondent to proceed with the execution of the decree. In the said application there was a prayer for substitution. Deb J., who heard the application, granted the permission

as prayed for. There was, however, no direction for substitution. In our opinion, as soon as the respondent had proved that the title of the disputed property had vested in the respondent in terms of the said order of amalgamation, the respondent became entitled to proceed with the execution. The substitution of the name of the respondent in the tabular statement in place of the name of the original decree-holder is a purely formal matter and can be carried out at any time, for there is no question of limitation. The application that is required to be made is an application for continuation of the proceedings for execution and not an application for substitution. We may refer to the observation of Sen J., in a Bench decision of this court in *Annada Prasad Mitra Vs. Sushil Kumar Mandal*, . In that case also the question was as to the continuation of an execution proceeding u/s 146 read with Order 21, Rule 16 of the Code of Civil Procedure. It has been observed by Sen J. that the right to continue or carry on proceedings presupposes a right to be substituted and an application to carry on the proceedings includes in itself an application for substitution. So, even if there be no prayer for substitution in the application, such a prayer will be implied. On the same principle, it may be said that when the court by its order allows the application and permits the transferee of the property to continue the proceeding, the court has also allowed the prayer for substitution which is implied in the application. In this connection, we may notice the contention of Mr. S.B. Mukherjee for the respondent that as the transfer of the disputed property has taken place in terms of orders u/s 394 of the Companies Act, 1956, and, the respondent, Metal Distributors Ltd., having been authorised to continue all pending proceedings initiated by the decree-holder, Binani Properties P. Ltd., no further act or deed is required to be done for the continuation of the execution proceedings. This contention finds support from the observation of Bachawat J. in *New Central Jute Mills Co. Ltd. Vs. Rivers Steam Navigation Co. Ltd. and Others*, . Be that as it may, we do not find any merit in the contention of the appellants that as there is no order for substitution of the name of the respondent, the order granting permission to the respondent to continue the execution proceedings is illegal and invalid.

11. The next point that has been urged on behalf of the appellants is that at the time S.C. Deb J. made the order dated February 6, 1970, granting permission to the respondent to proceed with the execution, no application for execution was pending and, accordingly, there was no scope for passing any such order. It is contended that the order dated November 20, 1970, of S.C. Ghosh J., allowing the application for execution having been set aside by the appeal court, it should be held that the application for execution was also finally disposed of and S.C. Deb J. had no authority to grant leave to continue the execution which was no longer pending. It is also contended that without any order for execution, the said order of S.C. Deb J. was void. The contention, in our opinion, is without any substance. The appeal court by its said order only set aside the order of S.C. Ghosh J. and it did not dismiss the application for execution. On the contrary, the appeal court granted liberty to the respondent to take steps for continuing the

execution proceedings initiated by the original decree-holder, Binani Properties P. Ltd. It is, therefore, absurd to think that the application for execution was also disposed of by the said order of the appeal court setting aside the order of S.C. Ghosh J. Further, the order granting leave to the respondent to proceed with the execution also implies an order for execution. The contentions of the appellants are rejected.

12. Another ground of attack of the appellants to the validity of the said order of S.C. Deb J., dated February 6, 1970, is that by the said order leave having been granted to the respondent to continue the execution proceedings " without prejudice to the rights and contentions of the parties ", it was only a tentative order and did not amount to the recognition of the right of the respondent to continue the execution proceedings. In support of this contention, learned counsel for the appellants has placed strong reliance on the decision of the Supreme Court in " Superintendent (Tech. I) Central Excise, I.D.D. Jabalpur and Others Vs. Pratap Rai, . In that case, the Appellate Collector of Customs vacated the order of adjudication of the Asst. Collector " without prejudice " on the ground of violation of the rules of natural justice. The question was whether by the said order a fresh adjudication proceeding was barred. It was held by the Supreme Court that as the Appellate Collector had vacated the order of the Asst. Collector on a technical infirmity and not on merits, he had advisedly used the words " without prejudice " in his order, and that if the Appellate Collector had intended to set aside the order completely and irrevocably, then he should have passed a consequential order for refund of the amount of penalty and for the release of the property confiscated. Further, it was observed that the implication of the term " without prejudice " means that the cause or the matter had not been decided on merits, and that a fresh proceeding according to law was not barred. In the instant case before us, while it is true "that S.C. Deb J., in his order dated February 6, 1970, had used the words " without prejudice to the rights and contentions of the parties " by that expression the learned judge meant that by granting leave to the respondent to continue the execution proceedings, he did not adjudicate on the merits of the execution petition or any objection that might be raised by the appellants subsequently in the execution proceedings. The order granting leave to the respondent, Metal Distributors Ltd., to proceed with the execution was not a tentative order; it was a final order so far as the right of the respondent to proceed with or continue the execution proceedings was concerned. This is clearly indicated, as the learned judge by the said order gave directions for the filing of affidavits by the parties. Had the leave been granted tentatively and not finally, in that case, no such direction for affidavits would have been given. In our opinion, this interpretation of the order of S.C. Deb J. is quite consistent with the above decision of the Supreme Court. We are, therefore, unable to accept the contention of the appellants that the said order was a tentative order and did not amount to the recognition of the right of the respondent to continue the execution proceedings.

13. It has been already noticed that in the schedule to the order of

amalgamation of this court dated September 17, 1970, of Binani Properties P. Ltd. with Binani Investment Co. Ltd., passed u/s 394(2) of the Companies Act, 1956, the disputed property was not mentioned, for it was not mentioned in the scheme of amalgamation and also in the application for sanction of the scheme. When the said omission came to the notice of the said Binani Investment Co. Ltd., since dissolved, it made an application for rectification of the said order dated September 17, 1970. By an order dated April 10, 1973, of the company court, the application was allowed and the disputed property, being 81, Netaji Subhas Road, Calcutta, was included in the schedule to the order of amalgamation dated September 17, 1970. The tenant-judgment-debtor made an application praying for the setting aside of the said order of rectification. That application was dismissed by Sabyasachi Mukharji J., by an order dated July 20, 1973. The tenant-judgment-debtor, being aggrieved by the said order dated July 20, 1973, has preferred one of these appeals, being the Appeal No. 335(A) of 1976.

14. It is contended on behalf of the appellants that after the order of amalgamation was made on September 17, 1970, and after the certified copy of the said order was filed with the Registrar for registration, Binani Properties P. Ltd. stood dissolved as per the said order; the disputed property not having been included in the order of amalgamation, there was no transfer of the same to the Binani Investment Co. Ltd., and, consequently, the same vested in the State of West Bengal on the principle of bona vacantia or by escheat. The order dated July 20, 1973, allowing the application for rectification has been challenged on behalf of the appellants as illegal and without jurisdiction. It is contended by the learned counsel for the appellants that as there was no clerical or arithmetical mistake or error, the order of amalgamation ought not to have been amended by the inclusion of the disputed property in the schedule to the order. It is submitted that, in any event, in view of Section 559 of the Companies Act, 1956, upon the expiry of two years from the date of dissolution, the order of dissolution cannot be reopened, and the learned judge acted without jurisdiction in allowing the application for rectification which was barred by Section 559. Further, it is the contention of the appellants that the order of rectification has no retrospective operation affecting the vesting of the disputed property in the State of West Bengal by escheat or on the principle of bona vacantia.

15. The above contentions of the appellants require some consideration. The scheme of amalgamation, inter alia, provides that the undertaking of the Binani Properties P. Ltd. stands transferred to and vested in the Binani Investment Co. P. Ltd. Further, it provides, inter alia, that the undertaking of the Binani Properties P. Ltd., shall include all properties, movable or immovable, of whatever nature. By the said order dated September 17, 1970, the company court sanctioned the scheme and also made an order for transfer in Form No. 42 of App. C to the Companies (Court) Rules, 1959, as prescribed by Rule 84 of the said Rules. Rule 84 provides that an order made u/s 394 shall be in Form No. 42 with such variation as the circumstances may require. As much argument has

been made by either side on the interpretation of the language used in Form No. 42, we propose to set out the relevant portion of Form No. 42, para. 1 and the schedule of Form No. 42 provides as follows:

" THIS COURT DOTH ORDER

(1) That all the property, rights and powers of the transferor-company specified in the first, second and third parts of the Schedule hereto and all other property, rights and powers of the transferor-company be transferred without further act or deed to the transferee-company and, accordingly, the same shall pursuant to Section 394(2) of the Companies Act, 1956, be transferred to and vest in the transferee-company for all the estate and interest of the transferor-company therein but subject nevertheless to all charges now affecting the same [other than (here set out any charges which by virtue of the compromise or arrangement are to cease to have effect)].

(Paragraphs 2, 3, 4, 5 and 6 are not relevant for our purpose and, as such, omitted)

SCHEDULE

PART I

(Insert a short description of the freehold property of the transferor-company)

PART II

(Insert a short description of the leasehold property of the transferor-company)

PART III

(Insert a short description of all stocks, shares, debentures and other choses-in-action of the transferor-company)."

16. The order that has been made u/s 394(2) of the Companies Act is in terms of Form No. 42. As has been stated already, the disputed property, being 81, Netaji Subhas Road, Calcutta, has not been included in any of the parts of the schedule to the order. The question, therefore, is whether the disputed property has also passed to the transferee-company, namely, Binani Investment Co. P. Ltd. It is contended by Mr. Mukherjee, learned counsel appearing on behalf of the respondent, that in spite of the fact that the disputed property has not been mentioned in the schedule to the order, still it has passed to the transferee-company. He has placed reliance on the expression " and all other property " in para. 1 of the order made in terms of Form No, 42. It is submitted by him that by virtue of the said expression the disputed property, which has not been mentioned in the schedule, shall be deemed to have been transferred to the transferee-company.

17. The scheme of amalgamation provides for the transfer of the entire undertaking of the Binani Properties P. Ltd; to the Binani Investment Company P. Ltd. Further, the scheme provides, inter alia, that the undertaking of the Binani

Properties P. Ltd. shall include all rights, powers, authorities and privileges and all properties, movable or immovable of whatever nature, etc. The scheme of amalgamation, therefore, clearly shows that it was agreed between the parties that all properties of the transferor-company would vest in the transferee-company. The scheme of amalgamation has been sanctioned by the company court and an order for the transfer has been made u/s 394(2) of the Companies Act. In our opinion, in the facts and circumstances of the case, particularly in the face of the scheme of amalgamation, there can be no room for doubt that the said order u/s 394(2) will include all the properties of the transferor-company, As soon as it is proved that any property to which the transferor-company had title at the time such an order u/s 394(2) was made, the property shall, by virtue of the said order, be deemed to have been transferred to the transferee-company. It is true that the disputed property has not been specifically mentioned in the schedule to the order, but the expression " and all other property " is wide enough to include any property not mentioned in the schedule. It is, however, contended on behalf of the appellants that as the disputed property has not been mentioned in the schedule, it did not pass to the transferee-company. The question whether a particular property has been transferred or not depends upon the facts and circumstances of each case. We are unable to accept the contention of the appellants that as the property has not been mentioned in the schedule, that will not be covered by the order of transfer. In certain cases, particularly where the scheme of amalgamation provides for the amalgamation of the undertaking of the transferor-company in part with that of the transferee-company, the non-mention of a property in the schedule will be of some consequence. But where, as in the present case, the amalgamation is of the entire undertaking, the scheme of amalgamation providing for the transfer of all properties, both movable and immovable, of any nature whatsoever, it is difficult to hold that the non-mention of a particular property in the schedule belonging to the transferor-company will keep the property outside the scope of the order of transfer u/s 394(2). So, on a proper construction of the order in the context of the facts and circumstances of the case, we hold that even though the disputed property was not mentioned in the schedule to the order u/s 394(2), it was covered by the said order and, consequently, it stood transferred to the transferee-company. There was, therefore, no necessity for rectification of the order.

18. The learned counsel for the appellants has placed much reliance on the decisions of the Supreme Court in *Peirce Leslie and Co. Ltd. Vs. Miss Violet Ouchterlony Wapshare and Others*, and in *Narendra Bahadur Tandon Vs. Shankar Lal* (since deceased) by Lrs, . In these decisions, it has been held by the Supreme Court that after a Corporation is dissolved, the property of the Corporation passed to the government by escheat or as bona vacantia. These two decisions, in our opinion, have no application to the facts and circumstances of the case, as we have already held that the disputed property had passed to the transferee-company by virtue of the order passed by the company court u/s

394(2) of the Companies Act, although the disputed property was not mentioned in the schedule to the order. In the said two decisions of the Supreme Court, there was no question of amalgamation of one company with another, but the company in question was dissolved and, accordingly, it was held that the property of the company passed to the government by escheat or as bona vacantia. In the instant case, however, the position of the transferee-company, that is, the Binani Investment Co. P. Ltd., was analogous to that of an heir of a deceased person. The question of escheat arises only when a person dies without leaving any heir. After an order u/s 394(2) was made and after the presentation of the certified copy of the order to the Registrar, the Binani Properties P. Ltd. stood dissolved and the transferee-company, that is, Binani Investment Co. P. Ltd., stepped into the shoes of the transferor-company. In our opinion it is difficult to apply the principle of bona vacantia or escheat in view of the existence of the Binani Investment Co. P. Ltd. with which the entire undertaking of the Binani Properties P. Ltd. was amalgamated. The contention of the appellants is misconceived and cannot be accepted.

19. Even assuming that the order u/s 394(2) did not include the disputed property as it was not mentioned in the schedule to the order, the question is whether after the rectification of the order and consequent inclusion of the disputed property in the schedule, the disputed property passed to the transferee-company with effect from the date the other properties of the company stood transferred to the transferee-company in view of the said order before it was rectified, in other words, whether the order of rectification would take effect from the date the original order was passed, that is, September 17, 1970. It is argued on behalf of the appellants that unlike an amendment of pleadings, the amendment of an order does not take effect from the date of the order when it was initially made. It is also urged that the court should not have entertained such an application for rectification, for the disputed property was neither mentioned in the scheme of amalgamation, nor was it mentioned in the application for the sanction of the scheme. Accordingly, it is contended that there was no question of clerical or arithmetical error in the order that was required to be amended or rectified and the court should not have entertained such an application for rectification.

20. It may be that an order, whether it is by way of amendment or not, takes effect from the date it is passed. The contentions as made above on behalf of the appellants do not appeal to us. When by an amendment of the order no change is effected, but the amendment only clarifies the order, such clarification or rectification will undoubtedly take effect from the date the order was passed as if it was already there in the order. In the instant case, the order having directed the transfer of all other properties, the rectification of the order that was made was by way of clarification of the order by the inclusion of the disputed property in the schedule. In the circumstances, we hold that the order of rectification is virtually an order of clarification of the order passed u/s 394(2) of the Companies Act. Such an order of rectification by way of clarification not having made any

change in the order will take effect from the date the order was originally made. In the view which we take, we are unable to accept the contention of the appellants that after the expiry of two years from the date of dissolution of the transferor-company, there could not be any order of rectification. We are also satisfied that there was a bona fide mistake on the part of the respondent in not including the disputed property in the schedule to the scheme of amalgamation or in the application for sanction of the scheme of amalgamation. There is no reason not to accept the contention of the respondent that in the schedule to the order along with premises No. 31, Strand Road, Calcutta, that has been mentioned, the disputed property should have been mentioned inasmuch as the valuation of the said premises as shown in the schedule also includes the valuation of the disputed property. At the instance of the appellants, the respondent has produced before us the balance-sheets of the transferee-company for different years. The value of the disputed property stated to have been included within the value of the premises No. 31, Strand Road, Calcutta, appears to be borne out from the balance-sheets. Surely, it was not the intention of the parties to the scheme of amalgamation that the disputed property should vest in the State of West Bengal by escheat and so the disputed property was not included in the scheme. On the contrary, it was the clear intention that all assets and properties including the disputed property would be transferred to the transferee-company which, as stated already, is manifestly clear from the terms of the scheme of amalgamation. In the circumstances, there can be no doubt that there was a bona fide mistake in not mentioning the disputed property in the schedule to the scheme of amalgamation and, consequently, it was not included in the order u/s 394(2). There is no substance in the contention of the appellants that the disputed property was not included in the scheme of amalgamation mala fide with an ulterior motive.

21. The maintainability of the execution petition has also been challenged on the ground that it was not supported by an affidavit of competency. There is no rule that when a company is the decree-holder and puts the decree in execution, the execution petition should be supported by an affidavit of competency. Order 29, Rule 1 of the CPC provides that in suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. Except the said provision there is no provision in the CPC providing that the execution petition shall be supported by an affidavit of competency. In our opinion, in view of Order 29, Rule 1, it will be sufficient if an execution petition is verified by the secretary or any director or other principal officer of the company. Even assuming that an affidavit of competency is necessary, more than one such affidavit have been filed in the instant case in support of the execution petition. On October 10, 1969, Baldeodas Pugalia, one of the directors of the Binani Properties P. Ltd., the original decree-holder, verified the execution petition. On the same day, he also "filed an affidavit in support of the execution petition. In para. 1 of the affidavit, it has been stated by

him categorically that he is authorised and competent to sign and affirm the tabular statement and also the affidavit on behalf of the plaintiff-decree-holder. There can be no doubt that the said affidavit is an affidavit of competency. It is not necessary to refer to other affidavits of competency which have all been referred to by the learned judge, for one affidavit of competency is quite sufficient. There is, therefore, no substance in the contention of the appellants that as the execution petition is not supported by an affidavit of competency, it is not maintainable.

22. The next point that has been urged on behalf of the appellants is that the decree became a nullity after there had been an amalgamation of the Binani Properties P. Ltd., the decree-holder, with the Binani Investment Co. P. Ltd. and, thereafter, on the amalgamation of the latter company with the respondent, the Metal Distributors Ltd. It may be recalled that the decree for eviction that has been put into execution was passed on the ground of reasonable requirement for building and rebuilding and also on the ground of default in payment of rent. It is contended that the transferee-company, that is, either the said Binani Investment Co. P. Ltd. or the present respondent, cannot take advantage of the said requirement of the decree-holder transferor-company and seek to evict the appellants from the disputed property. It is the contention of the appellants that such requirement of the transferee-company had not been adjudicated upon under the decree, as it could not be, and so it had no locus standi to recover possession of the disputed property for the purpose of building and rebuilding. The decree for possession, the learned counsel submits, had, therefore, become a nullity and cannot be executed.

23. The above contention, in our opinion, is fallacious and does not stand to reason. In the first instance, the decree is also on the ground of default in payment of rent and, secondly, the executing court cannot go behind the decree. The decree was passed by a court of competent jurisdiction and, consequently, it was quite a valid decree. It may be that after the decree was passed the disputed property was transferred to the transferee-company, but on that ground the decree, in our opinion, had not become a nullity even though the decree was passed on the ground of reasonable requirement for building and rebuilding. It is true that the executing court can construe the decree in the light of the judgment and, if necessary, on the basis of pleadings as held in *Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another*, . Such a construction can be made if the decree is vague or it is not consistent with the judgment, but where there is no such vagueness or inconsistency and the decree is clear, the executing court, in our opinion, will have no jurisdiction to embark upon a construction of the decree. Moreover, there is no question of the decree being a nullity under any principle of law simply because it was passed on the ground of reasonable requirement for building and rebuilding and thereafter the property in dispute was transferred. Under the West Bengal Premises Tenancy Act, 1956, when the decree is passed on the ground of building and rebuilding, the decree-holder has to comply with the provisions of the said Act regarding building and

rebuilding, etc. But it cannot be said that as the property has been transferred, the decree has become a nullity.

24. Much reliance has been placed by the appellants on a decision of the Delhi High Court in *Shama Banu and Others Vs. Jagadish Parshad and Others*, . In that case, during the pendency of the appeal against an order for eviction on the ground of bona fide requirement for building and rebuilding u/s 14(1)(g) of the Delhi Rent Control Act, 1958, the landlord sold his interest in the property and the new landlord was added as a party to the appeal. It was held that the new landlord could not evict the legal representatives of the tenant who died in the meantime, for the requirement of building or rebuilding was personal to the previous landlord and since he had ceased to be the owner that requirement came to an end after he had sold the property. If the new landlord wished to build or rebuild he would have to file his own eviction petition under Clause (g) and make his own claim against the tenant. He cannot claim the benefit of the original right to-sue in his capacity as the landlord. In coming to the above conclusion, the Delhi High Court relied on and followed the decision of the Supreme Court in *Phool Rani and Others Vs. Sh. Naubat Rai Ahluwalia*, , where it was held that the requirement of the landlord was his personal requirement, and that such personal cause of action must perish with the plaintiff. *Phool Rani's* case (supra) has since been expressly overruled in a subsequent decision of the Supreme Court in *Shantilal Thakordas and Others Vs. Chimanlal Maganlal Telwala*, . We do not, however, think that the above decision including the decision of the Delhi High Court in *Shama Banu's* case (supra) are relevant to the facts and circumstances of the instant case. In those cases, the transfer of the property had taken place during the pendency of the suit or appeal when the decree or order for eviction was yet to be made or had not become final and conclusive so that it could be put into execution. When during the pendency of a suit for ejectment on the ground of reasonable requirement, the landlord transfers the suit premises, the court may refuse to pass a decree for ejectment on that ground, for the requirement of the landlord or the members of his family for their own occupation or for building or rebuilding cannot be the requirement of the transferee. The appeal court may also take into consideration the fact of transfer of the suit premises during the pendency of the appeal as a subsequent event and set aside the decree for ejectment. But where, as in the present case, the decree for eviction has become final, there is no bar to the transfer of the premises in question by the plaintiff-decree-holder and the transferee will, as discussed above, be entitled to execute the decree; and it will be beyond the jurisdiction of the executing court to question the right of the transferee to execute the decree or to embark upon an adjudication whether the transferee has reasonable requirement of the premises. If such a question is allowed to be raised or such an adjudication is allowed to be made by the executing court, there will be no end to litigation and the decree will lose the sanctity that is attached to it. There will also be a great departure from the doctrine that the executing court cannot go behind the decree. In the circumstances, apart from

the fact, the decision of the Delhi High Court in Shama Banu and Others Vs. Jagadish Parshad and Others, , has no application to the facts of the present case. There is, therefore, no substance in the contention that after the transfer of the property in question, the decree for eviction had become a nullity.

25. The further contention of the appellants-is that so far as defendant No. 5, namely, P. Mullick & Co., is concerned, the decree passed against it was only on the ground of reasonable requirement of the landlord for the purpose of building and rebuilding inasmuch as the said P. Mullick & Co., is admittedly a sub-tenant in respect of the disputed property and it gave notice u/s 16 of the West Bengal Premises Tenancy Act, 1956, In view of Section 13(2) of the West Bengal Premises Tenancy Act, 1956, no decree for ejectment as against P. Mullick & Co. could be passed except on the ground mentioned in Section 13(1)(f), the other ground as contained in Section 13(1)(g) of the said Act admittedly not being applicable in this case. So the contention is that in any event the decree cannot be executed against P. Mullick & Co., as it was not passed on the ground u/s 13(1)(f) of the said Act.

26. The contention, in our opinion, is misconceived and is also factually incorrect. The decree was passed on August 10, 1966, that is, before Clause (f) of Section 13(1) of the West Bengal Premises Tenancy Act, 1956, was amended and Clause (f) was split up into Clauses (f) and (ff) by the West Bengal Premises Tenancy (Second Amendment) Act, 1969. The unamended Clause (f) contained both the grounds of ejectment, namely, reasonable requirement for building and rebuilding and also for personal occupation of the landlord. After the amendment, the ground of reasonable requirement for building and rebuilding has been placed under Clause (f) and the other ground under Clause (ff). The decree having been passed on the ground of reasonable requirement for building and rebuilding, it is a decree that satisfies the requirement of both the amended and unamended Clause (f). So, the decree is executable against P. Mullick & Co.

27. Lastly, it is argued that the learned judge was not justified in directing the grant of police help to the decree-holder for taking delivery of possession of the disputed property. It is submitted that without complying with the provision of Order 21, Rule 97 of the CPC, such a direction for police help cannot be given. It, however, appears that on November 8, 1968, when the bailiff had been to the disputed property to effect delivery of possession, he was resisted by the judgment debtors. The bailiff had submitted a report to that effect on November 16, 1968. On November 21, 1968, Sabyasachi Mukharji J., directed the grant of police help for the purpose of executing the writ of delivery of possession. In view of the said facts, we are of the view that the direction for police help is not unreasonable.

28. Before we part with these appeals, it may be stated that it is desirable that the tabular statement should be amended by deleting the name of Binani Properties P. Ltd. and substituting in its place the name of the respondent, Metal Distributors Ltd., so as to obviate all future difficulties in executing the decree.

29. For the reasons aforesaid, we affirm the judgment and order of Salil Kumar Roy Chowdhury J., and dismiss these appeals. The respondent will be entitled to amend the tabular statement by deleting the name of the decree-holder, Binani Properties P. Ltd., and, in its place, substituting the name of the respondent, Metal Distributors Ltd.

30. In view of the facts and circumstances of the case, there will be no order for costs in any of the appeals.

Sen, C.J.

31. I agree.