

(2013) 12 DEL CK 0142

In the Delhi High Court

Case No : EX. F.A. 24 of 2013 and CM No's. 14414 of 2013

Mrs. Neetu Saini

APPELLANT

Vs

Shri Ram Singh (Since Deceased) and Others

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 35, 151

Citation : (2013) 12 DEL CK 0142

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : I.S. Alag and Mr. J.S. Lamba, for the Appellant; Rakhi Ray, S.S. Ray and Mr. Vaibhav Gulia, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is an execution first appeal against the order dated 06.08.2013 by virtue of which the application under Order 21 Rule

101 CPC filed by the present appellant has been dismissed by the executing court holding that the appellant has stepped into the shoes of her

mother and she has no independent right, title or interest to the property in question warranting holding of an inquiry in terms of Order 21 Rule 101

CPC. The learned counsel for the appellant has submitted that the order which has been passed by the learned executing court is not sustainable in

the eyes of law inasmuch as the question as to whether the appellant has any right title or interest in the property could not have been decided or

rather rejected by the learned executing court at the threshold without permitting the appellant to adduce the evidence. He has further stated that till

the time the right of the appellant is not adjudicated formally by recording of evidence, dis-possession of the appellant from the suit property ought

to have been stayed.

2. It has also been contended by the learned counsel for the appellant that the original decree holder late Sh. Ram Singh who happens to be the

grandfather of the present appellant and the father of Respondent No. 1/1 (Col. Jatinder Pal Singh) herein had died on 24.11.2012. By virtue of

his death the appellant being the grand daughter (daughter of Mr. R.D. Singh, a pre deceased son of Ram Singh) she was entitled to a right of

inheritance in the suit property and, therefore, she has a right title and interest in the property of which she could not be divested. The learned

counsel for the appellant has, in order to support his contention, has placed reliance on two judgments of the apex court in Anwarbi Vs. Pramod

D.A. Joshi and Others, and N.S.S. Narayana Sarma and Others Vs. Goldstone Exports (P) Ltd. and Others, to contend that the possession of the

appellant in respect of the suit property deserves to be protected till the time the right of the appellant in respect of the suit property is formally

adjudicated after recording of the evidence.

3. The learned counsel for the respondent has vehemently contested the submissions made by the learned counsel for the appellant and contended

that this is only a ploy to prolong the execution and ensure that the fruits of the decree which was passed in favour of late Sh. Ram Singh, the

original decree holder and had been assigned in favour of the present Respondent No. 1/1 (Col. Jatinder Pal Singh) are not enjoyed by the said

respondent.

4. It has also been contended by the learned counsel for the respondents that there has been a long drawn legal battle between the original decree

holder late Sh. Ram Singh and Ms. Kirpal Kaur, the mother of the present appellant herein, which has gone right up to the Supreme Court. The

present appellant who is living in the same property along with the mother and was aware of the proceedings and despite this, she has made a false

averment in the application under Order 21 Rule 101 CPC that she learnt about the decree having been passed on 22.05.2013 and accordingly

chose to file an application. This fact has been contested by the learned counsel for the appellant.

5. Before dealing with the submissions advanced by the learned counsel for the appellant, it would be necessary to give a brief background of the

case. Late Sh. Ram Singh was the original decree holder. He was the grand father of the present appellant. He had filed a suit for possession against Respondent No. 2/Mrs. Kirpal Kaur, who is the mother of the present appellant. The husband of Respondent No. 2/Mrs. Kirpal Kaur, late Sh. R.D. Singh, who happened to be the son of late Sh. Ram Singh had pre-deceased him in the year 2001. This suit for possession had been decreed on 18.11.2004 in favour of late Sh. Ram Singh and against Respondent No. 2/Mrs. Kirpal Kaur. However, before the said suit being decreed, Respondent No. 2/Mrs. Kirpal Kaur had filed a suit for partition of the suit property bearing no. CS(OS) No. 2172/2003 in the High Court of Delhi against late Sh. Ram Singh. Against the judgment and decree dated 18.11.2004, Respondent No. 2/Mrs. Kirpal Kaur had filed RFA No. 630/2004 before the Hon"ble High Court. The said appeal came up for hearing before a Division Bench of this court on 02.06.2006 and on that particular date, a settlement was recorded between the late Sh. Ram Singh herein and Mrs. Kirpal Kaur/R-2 herein to the effect that Mrs. Kirpal Kaur would not alienate or hand over the property in her possession i.e. Second Floor of suit property bearing no. 45, Sant Nagar, East of Kailash, New Delhi to anybody till the final decision of the suit for partition filed by her being CS(OS) 2172/2003. It was also agreed in that consent order that in the event of CS(OS) 2172/2003 being dismissed, the possession of the suit property shall be handed over to the decree holder late Sh. Ram Singh or his nominee by Mrs. Kirpal Kaur/R-2. On 03.05.2007, the decree holder late Sh. Ram Singh nominated his son Respondent No. 1/1 (Col. Jatinder Pal Singh), another son, as his nominee to whom the possession could be delivered in pursuance to the consent decree. On 21.01.2011, CS(OS) 2172/2003 was dismissed by the learned single Judge of the High Court and thus the suit for partition was decided against R-2 herein/Mrs. Kirpal Kaur. Late Sh. Ram Singh, prior to decision of CS(OS) 2172/2003 i.e. the suit for partition filed by Respondent No. 2/Mrs. Kirpal Kaur, had filed an execution application which was adjourned sine die. Respondent No. 2/Mrs. Kirpal Kaur filed a RFA No. 41/2011 against the judgment and decree of the learned Single Judge of the High Court dismissing the suit for partition. The said appeal was also dismissed on 31.10.2012 by the Division Bench. On 08.11.2012 late Ram Singh filed an application seeking revival of his execution

application which had been adjourned sine die on account of the pendency of the partition suit. Against the order dated 31.10.2012, Respondent

No. 2/Mrs. Kirpal Kaur filed a SLP in August, 2013 along with an application seeking condonation of delay which is still pending adjudication

before the apex court. It has been pointed out that although along with the SLP an application for stay of the execution proceedings was filed,

however, that was rejected. In the meantime on 24.11.2012, late Sh. Ram Singh expired and his nominee R-1/1 Sh. J.P. Singh filed an application

on 30.01.2013 for substitution of his nominee in place of the decree holder which factum was recorded in the Division Bench order of the court

which had passed a consent decree in favour of late Sh. Ram Singh and against R-2/Smt. Kirpal Kaur.

6. It has been stated by the learned counsel for the appellant that the said application dated 03.01.2013 remains undecided while as the learned

counsel for the respondent has pointed out by referring to page 327 of the paper book that a separate application u/s 151 CPC was filed before

the executing court for deciding the application under Order 21 Rule 35 CPC for substituting the name of Respondent No. 1/1 (Col. Jatinder Pal

Singh) on account of the death of the death of late Sh. Ram Singh/decreed holder. This application was considered by a Division Bench of this court

on 01.07.2013 and the same was allowed with the observation that a Division Bench of this court on 03.05.2007 had already passed an order that

the possession has to be handed over to late Sh. Ram Singh or his son Respondent No. 1/1 (Col. Jatinder Pal Singh). Sh. Ram Singh having

expired, therefore, the only inference which could be drawn was that the possession in terms of the decree and in terms of the Division Bench

order had to be given to Respondent No. 1/1 (Col. Jatinder Pal Singh). It has also been pointed out that this order dated 01.07.2013 passed by

the learned ADJ was challenged by R-2/Smt. Kirpal Kaur in CM(M) No. 750/2013 wherein a single Judge of this court dismissed the said

petition by observing that the name of Respondent No. 1/1 (Col. Jatinder Pal Singh) has already been substituted as a nominee by the Division

Bench for the purpose of taking possession.

7. On 31.02.2013, Respondent No. 1/1 (Col. Jatinder Pal Singh) filed an application u/s 151 CPC for issuance of warrants. It was at this stage

that the present appellant filed an application under Order 21 Rule 35 CPC stating that she has an independent right, title or interest in the property

being the granddaughter of late Sh. Ram Singh and, therefore, she could not be dispossessed. The claim of the appellant has been dismissed by the

executing court by holding that the appellant has entered into the shoes of her mother and she cannot raise a separate claim with regard to the suit

property, and, therefore, the application has been dismissed.

8. Feeling aggrieved by the said order, the present appeal has been filed and the submissions which have been urged by the learned counsel for the

appellant is essentially that she has an independent right of inheritance being the granddaughter of Late Sh. Ram Singh and therefore she could not

be dispossessed. The learned counsel for the appellant has also placed reliance on two judgments of the Apex Court in Anwarbi Vs. Pramod D.A.

Joshi and Others, and N.S.S. Narayana Sarma and Others Vs. Goldstone Exports (P) Ltd. and Others, .

9. A perusal of the aforesaid facts would clearly show that certain facts are not in dispute and the same are that the suit for possession was initiated

by late Sh. Ram Singh, father in law of Respondent No. 2 herein/Smt. Kirpal Kaur, which was decreed on 18.11.2004. Before the said decree

was passed, the mother of the present appellant, who is Respondent No. 2 herein, filed a suit for partition claiming 1/5th share in the suit property,

when Mrs. Kirpal Kaur/Respondent No. 2, mother of the appellant, had filed the suit for partition, her husband Late Sh. R.D. Singh had already

expired, therefore, even though the suit was filed by her individually, but it is deemed to have other two legal heirs of late Sh. R.D. Singh namely

their two daughters, one of whom is the present appellant. An appeal was filed by Respondent No. 2/Smt. Kirpal Kaur against the decree of

possession passed on the basis of the suit of late Sh. Ram Singh before a Division Bench of this court where the court had recorded the

compromise and disposed of the said appeal in terms of the said compromise. The terms and conditions of the compromise were that Respondent

No. 2/Smt. Kirpal Kaur had accepted the decree which was passed by the trial court against her but the possession of the suit premises could not

be retrieved by the decree holder late Sh. Ram Singh till the time the suit for partition which was filed by Respondent No. 2/Smt. Kirpal Kaur was

decided. It was also agreed between the parties that in case the suit for partition was decided in favour of Respondent No. 2 herein/Smt. Kirpal

Kaur, the decree could not have been executed against her. But unfortunately, the suit for partition was dismissed against Respondent No. 2/Smt.

Kirpal Kaur. In the appeal filed by Respondent No. 2/Smt. Kirpal Kaur against the judgment and decree dated 18.11.2004, it was recorded by

the Division Bench with the consent of the judgment debtor that she will hand over the possession of the suit property to the decree holder or his

nominee in the event of her failure in the suit for partition. Having suffered an adverse order in the suit for partition, it was not open to Respondent

No. 2/Smt. Kirpal Kaur or for that matter her daughters, one of whom is the present appellant, to contend that she would not hand over the

possession of the suit property to late Sh. Ram Singh or his nominee. Respondent No. 2/Smt. Kirpal Kaur has already preferred a SLP in the apex

court along with an application seeking condonation of delay against the judgment of the Division Bench dated 31.10.2012 which is still pending

but notably in the said SLP, although notice has been issued to the respondents, no stay has been granted against the execution of the decree. As a

matter of fact, it has been pointed out by the learned counsel for the respondents that the prayer for stay has been specifically rejected by the apex

court vide order dated 16.09.2013. It is in these circumstances that the present appellant who happens to be the daughter of Respondent No.

2/Smt. Kirpal Kaur has filed an application seeking to urge her independent right, title and interest in the suit property on account of the unfortunate

death of the decree holder late Sh. Ram Singh. First of all, I feel that on account of the death of late Sh. Ram Singh on 24.09.2012, the appellant

would not have an occasion to urge her independent right, title or interest in the suit property for the simple reason that her mother Respondent No.

2/Smt. Kirpal Kaur had chosen to file a suit for partition way back in 2003 when she was facing a suit for possession filed by her father in law, late

Sh. Ram Singh. When the suit for partition was filed by Respondent No. 2/Smt. Kirpal Kaur, her husband Sh. R.D. Singh, had unfortunately died

much prior to that. The plea of mother of the appellant that the suit property was an ancestral property and therefore she was having 1/5th share

having been rejected by the trial court, would bind not only the mother of the appellant Respondent No. 2/Smt. Kirpal Kaur herein but also all the

other legal heirs of late Sh. R.D. Singh, who was father of the present appellant. Merely because the decree holder has died in 2012, would not

give rise to an independent right to the appellant and the trial court has rightly held that she has stepped into the shoes of her mother and tried to

agitate an issue which stands concluded by a prolonged litigation between the parties namely R-2/Smt. Kirpal Kaur and her father in law late Sh.

Ram Singh.

10. So far as the question of Respondent No. 1/1 (Col. Jatinder Pal Singh) being the nominee and in that capacity being a trustee is concerned, the

appellant has availed of a remedy by filing an independent suit before the appropriate forum by urging her right, which will be decided by the court

concerned but so far as her setting up an independent right in the instant case is concerned, if this permitted to be done, it will only result in grossest

abuse of the processes of law because as late as in 2006, the mother of the appellant had consented to hand over the possession of the suit

property to the decree holder or his nominee in the event of her losing the partition suit and moreover the partition suit has been dismissed, the

appeal challenging the said dismissal has also been dismissed and the SLP having been filed, the stay has also been specifically rejected by the

apex court. In such a contingency, to entertain the objections of the present appellant would only amount to putting premium on the dishonest

conduct of a party who is admittedly and apparently acting in tandem with her mother.

11. So far as the judgments relied upon by the learned counsel for the appellant are concerned, in Anwarbi Vs. Pramod D.A. Joshi and Others, ,

the Supreme Court has observed that the person who has filed a petition under Order 21 Rule 35 CPC is entitled to retain the possession of the

suit premises till the time his objections are decided, is not applicable to the facts of the present case because in the said case, there was no such

application where the relative of the appellant before the apex court had consented to hand over the possession of the suit premises in pursuance to

the decree having been suffered by him in a competent court while as in the instant case, not only the mother of the present appellant had suffered

an adverse decree in the suit for possession filed by her father in law but had also made that decree subject to the suit for partition which was

admittedly decided against her. Therefore, the facts of that reported case are distinguishable.

12. So far as the second judgment in N.S.S. Narayana Sarma and Others Vs. Goldstone Exports (P) Ltd. and Others, is concerned, it only deals

with the interpretation of Order 21 Rule 101 CPC and the connected rules 97 to 99. It does not lay down as a matter of course that wherever a

person claims an independent right title or interest in the suit property in such a situation invariably in every case, the evidence is to be recorded.

Rather, there is a judgment of the Apex Court in Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another, where it has been observed that the

adjudications of the objections filed by a party obstructing the execution of the decree need not be necessarily based on a detailed inquiry or on the

basis of evidence. It is only in a case where the court deems it necessary that the court may permit such a party to adduce evidence.

13. I feel that the proposition of law laid down in Silverline Forum's case (supra) squarely fits in the facts of the present case. In the instant case, I

am of the considered view that the executing court has rightly dismissed the objections of the present appellant holding that she has stepped into the

shoes of her mother and it is only a ploy to defer the execution of the decree. In normal circumstances, such an appeal, which is a gross abuse of

the processes of court & law should have been dismissed with imposition of heavy cost, however, keeping in view the fact that the appellant is a

lady who is admittedly living with her mother and is stated to be having matrimonial discord, I refrain from do so. Dismissed.