
(1999) 08 DEL CK 0053
In the Delhi High Court
Case No : C.R. NO. 310 of 1995

Ram Niwas and Others

APPELLANT

Vs

Smt. Gunmala Jain and Others

RESPONDENT

Date of Decision : 25-08-1999

Acts Referred:

Citation : (2000) 1 AD 113 : (1999) 82 DLT 803

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. S.N. Mehta, for the Appellant; Mr. J.C. Mahindroo, for the Respondent

Judgement

M.K. Sharma, J.—The present revision petition arises out of the order dated 18th March, 1995 whereby the executing court dismissed the objection of the petitioners/objectors. The respondent No.1 herein obtained a decree for possession in respect of the suit property against the defendant Raj Pal.

2. An appeal was filed which was also dismissed as against which a second appeal was filed in this court which was registered as RSA No.153/1982. This High Court by judgment and order dated 10.11.82 dismissed the appeal in limine. The defendant Raj Pal, however, moved the Supreme Court of India and the Supreme Court by order dated 14.11.85 directed the decree holder to pay Rs.10,000/ to Sh. Raj Pal for the superstructure that Raj Pal claimed to have constructed in the suit land. The Supreme Court further directed that Raj Pal would handover vacant possession of the suit property to the plaintiff within six months. Since the defendant failed to hand over the possession of the suit property even after expiry of the aforesaid period fixed by the Supreme Court, an execution case was filed by respondent No.1 herein, which was registered as Ex. No.35/91 In the said execution petition four persons, namely, Balbir Singh, Braham Prakash, Suresh Kumar and Gopal Singh claimed to be the actual tenants under the judgment debt or defendant and contended that they could not be evicted from the suit property pursuant to the decree. Their objections

were dismissed, as against which a civil revision was filed in this court which was also dismissed.

Subsequent thereto, Rajinder Pal Sharma also filed an objection in the said execution case No. 35/1991. Rajinder Pal died during the pendency of the petition and his legal representatives, the petitioners herein were substituted in his place. The objections filed by the legal representatives of the Rajinder Pal were dismissed by the executing court. The revision petition as against the said order was also dismissed by the High Court and thereafter the matter was taken to the Supreme Court. The Supreme Court directed that the executing court would have to identify the property against which the decree was sought to be executed in order to be satisfied that the property was the same against which the decree was obtained. The Supreme Court also ordered that as there was some confusion regarding the identity of the land the executing court might appoint a Commissioner to investigate into the matter. Pursuant to the aforesaid order passed by the Supreme Court, the executing court appointed the Tehsildar as the Local Commissioner by order dated 10.11.1982. The executing court while appointing the Local Commissioner directed him to inspect the suit property and report specifically on the following issues :

1. Whether the suit property bearing No. 111, measuring 10" x 10" (100 sq. hectares) constructed in Khasra No. 1276/1007/340 and 1277/1007/340 village Sadhora Khurd, Basti Patwari Kherorimal, Ward No.17, Dhan Singh Nagar, opposite Brass Metal, Rohtak Road, New Delhi as shown red in the site plan marked R6 is correct as per site plan and is in possession of the L.Rs. of Late Rajender Pal Singh.
2. Whether the premises as shown in the site plan attached with the plaint and site plan attached with the execution application and site plan marked RVI represented the same property?
3. The Local Commissioner submitted his report on 3rd February, 1994. However, on perusal of the aforesaid report, the executing court found the same relating only with regard to demarcation. Therefore, another direction was issued by the executing court to the Tehsildar/Local Commissioner to submit a full report. On 1.2.94, the Local Commissioner filed his second report. Although the objector filed objections to first report of the Local Commissioner, they did not file any objection with regard to second report filed by the Local Commissioner. After considering the reports submitted by the Local Commissioner and objections filed thereto by the petitioners herein, who were to objectors, the executing court dismissed the objections filed by the impugned order. The executing court has given reasons not only for dismissing the said objections but also for accepting the reports of the Local Commissioner. She had dismissed the plea of one of the objectors, namely, Ashok Kumar that he had signed blank papers, on the ground that even if the said Ashok Kumar signed blank papers, he himself was responsible for signing the said papers and, Therefore, could not now turn back and say that they are not acceptable. She found the aforesaid plea as frivolous.

She further found that the report of the Local Commissioner is clear and unambiguous and she accepted the said report as the Local Commissioner had clearly stated in his report about the identity and demarcation of the land. She further found that the suit property lies in Khasra Nos. 1276/1007/340, Basti Patwari, Opp. Brass Metal, New Rohtak Nagar, Delhi and the said area tallied with the portion marked in red in the site plan marked RVI which was correct as per the site. She also took note of the fact that the Local Commissioner also mentioned in his report that the premises were in possession of the legal representatives of late Rajinder Pal. She also found on perusal of the reports of the Local Commissioner that as per the revenue records, it was apparent that Khasra Nos. 1276/1277 belong to the decree holder and the property for which the decree was granted fell within it. It was further held that since both the Khasra Nos. 1276 and 1277 belong to the decree holder, it is not a material discrepancy that the plaintiff in her suit had described the property as falling in both the Khasra numbers, whereas the Tehsildar found that the property in question fall only in Khasra No.1276.

4. Counsel for the petitioner submitted that the executing court could not go behind the decree and that the decree has to be executed as it is. He submitted that there was total variation in the description of the property shown in the site plan, plaint and the place where the decree is sought to be executed. According to the counsel when site plan, decree and plaint are compared with the actual site plan of the plaintiff, it is apparent that the same does not tally and, Therefore, the executing court failed to exercise the jurisdiction vested in it and illegally exercised jurisdiction not vested in it.

5. I have considered the aforesaid submission of the counsel appearing for the petitioner. It is to be noted that pursuant to the order of the Supreme Court the Tehsildar was appointed as the Local Commissioner by order dated 10.11.92. The Tehsildar on inspection of the site as also the relevant documents submitted two reports. Said Tehsildar specifically stated in his report that the suit property lies in Khasra No. 1276/1007/340, Opp. Brass Metal Works, New Rohtak Road and the area tallies with the portion marked in red in the site plan marked RVI which was correct as per the site. He has also submitted that the suit premises were in possession of the legal heirs of Late Rajender Pal Sharma, the present petitioners herein. The objectors did not file any objection as against the second report of the Tehsildar. The executing court considered the said report of the Tehsildar and upon consideration thereof agreed with the report of the Tehsildar who found that the site plan marked RVI is the correct site plan and the site plan which was filed with the suit and in the execution were incorrect as regards boundaries. The statements of the Tehsildar, that the suit property falls in Khasra No. 1276/1007/340 and that the suit property is located opposite Brass Metal Works, New Rohtak Road and that the decree holder in the said suit prayed for decree of property falling in Khasra No. 1276/1007/340 and 1277/1007/340 and the objector claimed that the property in his occupation falls in Khasra No.1278 was also considered by the executing court. The aforesaid report of the Local

Commissioner makes it apparent that Khasra Nos.1276 and 1277 belong to the decree holder and the decree was granted in respect of Khasra No. 1276/1007/340 which nullifies the claim of the objector that the property in his possession does not fall within the description given in the suit.

6. The contentions of the petitioners, Therefore, are without any merit. The executing court pursuant to the orders of the Supreme Court appointed the Local Commissioner, who is an revenue official, who has gone to the site, inspected the same along with the records and found that the suit property for which the execution is sought, is the property for which warrant of possession is sought for in the execution petition. In my considered opinion, no flaw could be found in the order of the executing court in rejecting the objections filed by the petitioners. The petition stands dismissed.