

(2014) 11 DEL CK 0249

In the Delhi High Court

Case No : CM(M) No. 584/2014 and CM No. 10688/2014 (stay)

Sumitra Devi

APPELLANT

Vs

Satpal Gugnani

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 102, 11
Constitution of India, 1950 — Article 227

Citation : (2014) 11 DEL CK 0249

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : Preeti Meehan, Advocate for the Respondent

Judgement

Valmiki J Mehta, J.—This petition impugns the order of the executing court dated 29.5.2014 directing issuance of warrants of possession with respect to the suit property.

2. Learned counsel for respondent no.1 states that the respondents have already taken the possession of the suit property in execution of the decree and are already in possession for about past three months.

3. Learned counsel for respondent no.1 also draws the attention of this Court to an order dated 17.7.2014 and a judgment dated 21.7.2014 passed in connected matters in CM(M) No. 339/2014 and CM(M) No. 682/2014, respectively, showing dismissal of similar type of petitions filed by same and other persons. This order and the judgment read as under:-

Order dated 17.7.2014 passed in CM(M) 339/2014

"1. No one appears for the petitioners. This case was first listed on 4.4.2014 when at the request of the counsel petitioners the same was renotified for today making it clear that there is no stay of the impugned order.

2. Today no one was present on the first call. No one is present even on the

second call although it is 4.25 PM.

3. This petition under Article 227 of the Constitution of India impugns the order dated 4.1.2014 by which warrants of possession were issued in favour of the decree-holder.

4. It may be noted that eviction decree has been confirmed right till the Supreme Court.

5. Petitioner nos. 1 and 2 claim to be the co-owners who have sold their rights to petitioner nos. 3 and 4 who are the judgment debtors and consequently objections are being raised to execution of the decree.

6. The Supreme Court in the case of India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others, has held that rights with respect to eviction petition are crystallized as on the date of filing of the petition and subsequent events cannot frustrate the eviction petition and a co-owner has no right to withdraw the consent which was granted at the date of filing of the petition.

7. In view of the above, it is clear that the present petition is an abuse of the process of law, and the same is therefore dismissed."

Judgment dated 21.7.2014 passed in CM(M) 682/2014

"Caveat No.592/2014

1. Counsel appears for the caveator. Caveat stands discharged. C.M. No.11501/2014 (exemption)

2. Exemption allowed subject to just exceptions. C.M. stands disposed of. + C.M. (M) No.682/2014 and C.M. No.11502/2014 (stay)

3. On 17.7.2014, I have dismissed a petition being C.M (M) No.339/2014 which was filed by the stated owners of the suit property to favour the present petitioner/judgment debtor with the following order:-

"1. No one appears for the petitioners. This case was first listed on 4.4.2014 when at the request of the counsel petitioners the same was renotified for today making it clear that there is no stay of the impugned order.

2. Today no one was present on the first call. No one is present even on the second call although it is 4.25 PM.

3. This petition under Article 227 of the Constitution of India impugns the order dated 4.1.2014 by which warrants of possession were issued in favour of the decree-holder.

4. It may be noted that eviction decree has been confirmed right till the Supreme Court.

5. Petitioner nos. 1 and 2 claim to be the co-owners who have sold their rights to

petitioner nos. 3 and 4 who are the judgment debtors and consequently objections are being raised to execution of the decree.

6. The Supreme Court in the case of India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others, has held that rights with respect to eviction petition are crystallized as on the date of filing of the petition and subsequent events cannot frustrate the eviction petition and a co- owner has no right to withdraw the consent which was granted at the date of filing of the petition.

7. In view of the above, it is clear that the present petition is an abuse of the process of law, and the same is therefore dismissed."

4. The basic grievance of the petitioners/judgment debtors is that the eviction petition could not proceed because the co-owners/sisters were not parties to the eviction petition.

5. Besides the fact that it is settled law that a co-owner can file an eviction petition, this issue was or ought to have been raised in the main eviction proceedings so that it is decided in the main eviction proceedings, and which eviction proceedings have attained finality right till the Supreme Court inasmuch as the eviction petition had been decreed against the petitioners and confirmed by the dismissal of the SLP of the present petitioners.

6. The provision of Section 11 of Code of Civil Procedure, 1908(CPC) read with Explanation IV thereof deals with the principle of constructive res judicata. All aspects which might or ought to have been urged in the main petition, if not taken as a ground of defence or attack, are deemed to have been decided in the main proceedings and cannot be raised by means of objections in the execution proceedings.

7. Order 21 Rule 102 CPC provides that objections cannot be filed by transferee pendente lite. If objections cannot be filed by persons who are transferees pendente lite, and which is on the principle that a decree binds the defendant and all persons who claim through the defendant, surely the defendant in a suit (and a respondent in the eviction proceedings such as the present petitioner) cannot file objections to execution of the decree.

8. In view of the above, there is no merit in the petition and the same is therefore dismissed with costs of Rs.10,000/-. Costs be paid within four weeks from today."

4. No one appeared for the petitioners on 1.8.2014. No one appears for the petitioners even today.

5. I have seen the impugned order and I do not find prima facie any illegality in the same because respondents after much contest right till the Supreme Court got the eviction decree which sought to be frustrated by the petitioners whose connected petitions have already been dismissed.

6. Since however no one appears for the petitioners this petition is dismissed in default and for non-prosecution.

7. Let no application for restoration or recall of this order be entertained by the Registry unless costs of Rs.50,000/- are first paid to the respondent no.1.