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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25th October, 2021

+ **EX.F.A. 2/2020 & CM APPLs. 6715/2020, 34433/2020**

SANTRA DEVI Appellant

Through: Mr. Ghanshyam Thakur, Mr. Rahul
Dev Sharma & Ms. Kanika Madan,
Advocates (M-9953660455)

versus

PARAMJIT KAUR & ANR Respondents

Through: Mr. S.K. Vashisht, Advocate.
Mr. Mayank Bansal, Advocate for
DDA.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal arises out of the impugned order dated 25th January, 2020 passed by the Ld. ADJ-01 (NE), Karkardooma Courts, Delhi (*hereinafter "Executing Court"*) in **Ex. No. 786/2018** titled **Paramjit Kaur v. Santra Devi**, by which the objections filed by the Judgment Debtor/Appellant herein, were rejected by the Executing Court. Further, by the impugned order, the Executing Court has issued warrants of possession in respect of the property bearing No. H-39, Gali No. 3, Shastri Park, Delhi-110053 (*hereinafter "suit property"*) and warrants of attachment against the moveable assets of the Judgment Debtors therein, including the Appellant. The said order has been followed by another order dated 27th March, 2021 passed by the Executing Court, vide which warrants of possession and

warrants of attachment have again been issued in favour of the Decree Holders/Respondents herein.

3. The background of the case is that a suit for possession, declaration and permanent injunction being **Civil Suit No.174/2014** titled **Smt. Paramjit Kaur v. Sh. Surbir Singh**, was instituted on 8th May, 2008 by the Plaintiffs/Respondents herein - Smt. Paramjit Kaur and Shri. Surbir Singh, against seven Defendants, including the Appellant herein, Smt. Santra Devi, in respect of the suit property. In the said suit, which was filed before the Ld. ADJ, Central-17, Tis Hazari Courts, Delhi, the following issues came to be framed:

- “1) Whether the suit has not been properly valued for the purpose of court fees and jurisdiction? (OPD)*
- 2) Whether the suit is liable to be dismissed under Order 7 R 11 CPC? (OPD)*
- 3) Whether the defendants are the owners of the suit property by way of adverse possession? (OPD)*
- 4) Whether the plaintiff no.1 is entitled to the declaration as an absolute owner of the suit property? (OPD)*
- 5) Whether the plaintiffs are entitled to the decree of possession of the suit property? (OPD)*
- 6) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for in the suit? (OPP)*
- 7) Relief.”*

4. Evidence was adduced by the parties and the suit was decreed, vide judgment and decree dated 15th July, 2014, in the following terms:

“56. In the light of my findings upon the forgoing issues, I hereby pass a decree of possession in favour of the plaintiff and against the defendants with respect to the suit property as shown in red colour in the site plan Ex.PW1/10 on record filed by the plaintiff. Plaintiff no.1 is also declared to be the owner of the suit property as shown in red colour in the site plan Ex.PW1/10 on record. A decree of permanent injunction is also passed in favour of the plaintiffs and against the defendants restraining the defendants and their agents etc. from creating any third party interest in the suit property. Costs of the suit are also awarded in favour of the plaintiffs.

*Decree sheet be prepared accordingly by the Reader.
File be consigned to Record Room after due compliance.”*

5. Aggrieved, the Defendants in the abovementioned suit including the Appellant herein, preferred an appeal against the decree dated 15th July, 2014, being **RFA 383/2014** titled **Smt. Santra Devi & Ors. v. Smt. Paramjit Kaur & Anr.** During the adjudication of the said appeal, *status quo* was directed to be maintained, vide order dated 25th August, 2014. On 5th December, 2017, the Id. Single Judge hearing the said appeal issued directions in respect of the stay application. The relevant extract of the order dated 5th December, 2017 is as under:

CM No. 37755/2017 (for stay)

1. Learned counsel for the appellant submits that the respondent has filed the execution petition before the trial court for execution of the impugned judgment and decree for possession dated 15.07.2017. He submits that the appellant/applicant has been carrying a business of Dairy in the property. He submits that the property can fetch the rent to the tune of Rs.20,000/- to Rs.25,000/- per month, if let out.

2. *On the other hand, learned counsel for the respondent submits that the property can fetch the rent of Rs.50,000/- per month, if let out.*
 3. *In these circumstances, subject to appellant depositing with the Registry of this court use and occupation charges @ Rs.40,000/- per month during the pendency of the appeal from the date of decree within six weeks, the execution proceedings of the impugned judgment and decree shall remain stayed. This shall be subject to further condition that appellant shall continue to deposit further use & occupation charges by 10th of each succeeding English calendar month.*
 4. *The application stands disposed of.*
 5. *Order dasti.*
6. As per the above order dated 5th December, 2017, the Appellant, who is the Appellant in the present appeal as well, was directed to deposit use and occupation charges of Rs. 40,000/- per month during the pendency of the appeal, subject to which the execution proceedings of the judgment and decree dated 15th July, 2014 was stayed. The Appellant defaulted in making the said deposit in terms of the conditions for stay. Repeated applications for modifications of the order dated 5th December, 2017 were moved by the Appellant. The first application being **CM NO.4446/2018** for modification was dismissed vide order dated 9th March, 2018. The relevant extract of the said order is as under:

3. In their application, it is stated by the applicants that the respondents have allegedly purchased the property in question on 20.01.1989 for a sum of Rs.52,000/- and they have valued the suit for the purpose of court fees and jurisdiction at Rs.3,10,000/- and considering both these considerations, the use and occupation charges of the property in question during pendency of the appeal could not be more than Rs.5,000/- a month.

4. *The factual position as submitted on 05.12.2017 during the course of the arguments on application for grant of stay during the pendency of the appeal has not been disputed in the application. It is submitted by learned counsel for the applicant that previous counsel of the applicant has wrongly stated that Dairy business is being run in the property in question and could fetch the rent of Rs.20,000/- to Rs.25,000/- per month. However, this fact is not pleaded in the application. The use and occupation charges during the pendency of the appeal are not to be assessed on the basis of the purchase value of the property in the year 1989 or valuation of suit for the purpose of court fee and jurisdiction as claimed in the application.*

5. *In the circumstances, I do not find any justification for modification of the order dated 05.12.2017.*

6. *The application is without merit and same is dismissed.*

7. *Order dasti.”*

7. Thereafter, on 12th September, 2018, yet another application being **CM No.37225/2018** for modification of order dated 5th December, 2017 was dismissed with costs of Rs. 50,000/-. The said order dated 12th September, 2018 reads as under:

CM No. 37225/2018 (for modification)

Some litigants, as also some Advocates such as the Advocate appearing for the appellant, do not understand the concept of finality of an order, and instead of abuse the process of law by filing repeated applications although the relief claimed is already earlier denied. As against the appellants there is a decree for possession in terms of the impugned judgment dated 15.7.2014. Appeal was dismissed in default and at the time of restoration directions were issued against the appellants to deposit the mesne profits in terms of the order dated 5.12.2017 in CM 37755/2017. Mesne profits were to be deposited at Rs.40,000/- per month by the appellants

during the pendency of the appeal. Appellants had sought the modification of the order dated 5.12.2017, and which was in fact nothing but seeking review of the order dated 5.12.2017, but this application seeking 'modification' was dismissed by the learned Single Judge of this Court vide order dated 9.3.2018. Now once again the present application is moved seeking modification of the order passed on 5.12.2017 and which barred on account of relief already been earlier declined. The application being a gross abuse of the process of law is therefore dismissed with costs of Rs. 50,000/-, and which costs shall be positively deposited by the appellants with the Chief Minister Distress Relief Fund of State of Kerala within four weeks and deposit of costs shall be a condition precedent for the appellants to continue with the present appeal.

CM No.37226/2018 (U/o 41 Rule 27 CPC)

This application will be considered at the time of final arguments in the appeal.

8. The said costs of Rs.50,000/- came to be deposited by the Appellants therein. Once again, a third application being **C.M. 6728/2020** was filed which was heard on 24th February, 2020. In respect of the costs which were deposited, the same was confirmed by the Court. Further, since the use and occupation charges of Rs.40,000/- per month had not been deposited in terms of order dated 5th September, 2017, the undertaking of the Appellant was recorded to the effect that the Appellant shall deposit a sum of Rs.10 lakhs along with the arrears, and shall continue to deposit the monthly user charges on or before the 7th of each calendar month without default. The said order reads as under:

CM APPL No.6728/2020

On an early hearing application filed by the appellant, the learned senior counsel for the appellant says vide order dated 05.12.2017, the appellant was directed to

deposit the user/occupation charges @ Rs.40,000/- per month during the pendency of the appeal from the date of decree itself within six weeks. The decree was passed in the present case on 15.07.2014, which amount comes to approximately Rs.25 lacs which the appellant were though intending to deposit but could not deposit earlier as other litigations were pending. The appellant however have deposited costs of Rs.55,000/- imposed upon them. It is stated an amount of Rs.10 lacs shall be deposited within two days from today with the Registrar General of this Court and the arrears, if any, shall be deposited within three months from today, however, the appellant shall continue to deposit the monthly user charges on or before 7th of each calendar month w.e.f. 01.03.2020 without default and in case of default, the stay granted by this Court shall stand automatically vacated and the respondent shall have the right to execute the decree. The application stands disposed of.

RFA 383/2014

List for disposal on 10.07.2020, the date already fixed. The execution proceedings shall remain stayed till the next date of hearing. Copy of the order be given dasti under signature of the Court Master.

9. Admittedly, the Appellant failed to comply with the above order dated 24th February, 2020. However, as per Mr. Thakur, Id. Counsel appearing for the Appellant, the Appellant had deposited the sum of Rs. 10 lakhs and Rs. 40,000/- per month as use and occupation charges for a few months. Thereafter, due to the onset of the Covid-19 pandemic, the deposit could not be made.

10. In 2018, the Respondents herein sought an execution of the decree dated 15th July, 2014. In the execution proceedings in **Ex. No. 786/2018**, the Decree Holder relied upon the proceedings in **RFA 383/2014**. In the said

proceedings, the execution of the decree was sought by issuing warrants of possession in respect of the suit property along with warrant of attachment and recovery of costs.

11. Since the interim order was vacated in **RFA 383/2014**, the Executing Court proceeded with the execution of the decree dated 15th July, 2014. Before the Executing Court, objections were filed by the Appellant and the primary stand of the Appellant was that the land in question belongs to the Delhi Development Authority (*hereinafter referred as, 'DDA'*), as the same was acquired by the DDA way back in 1969, vide Award No. 4/1969. According to the Appellant, since the land had been acquired by the DDA from the erstwhile owner, Shri Dharampal, any subsequent sale of the suit property to the Respondent who has now obtained the decree would be *void ab initio*. Mr. Ghanshyam Thakur, Id. Counsel for the Appellant, vehemently submits that the Respondent had obtained the decree by fraud and the Appellant cannot be dispossessed as he has a right in law to retain possession of the suit property on account of adverse possession.

12. On the other hand, Mr. S.K. Vashisht, Id. Counsel for the Decree Holder, submits that the Appellant's objections are not maintainable as the objection in respect of the land belonging to DDA was never taken in the suit before the Trial Court. Such an objection cannot be entertained in the execution proceedings. In any event, he submits that the Appellant has no right to remain in occupation of the suit property as the Appellant has repeatedly defaulted in complying with the various directions which have been issued by the Court. No use and occupation charges are being paid by the Appellant.

13. In view of the stand taken by the Appellant, vide order dated 6th

August, 2021 in this appeal, this Court had directed the DDA to appear in the matter. The DDA has entered appearance and it is submitted by Mr. Mayank Bansal, Id. Counsel for DDA, that both the parties were aware of the fact that the land in question had been acquired by the DDA. However, the possession of the land in question was not taken over by the DDA due to built-up houses and constructions on the said property. This, according to him, does not vest any right either with the Decree Holder or the Judgment Debtor. Mr. Bansal, Id. Counsel further submits that DDA was not a party to the suit.

14. The question before this Court in the present appeal is whether the impugned order dated 25th January, 2020 warrants any interference. In the said order, the Executing Court has dealt with the rival contentions of the parties in detail. The Executing Court is conscious of the fact that the DDA may be claiming rights to the land in question. After recording the contentions and the findings to the following effect, the Executing Court directed the warrants of possession to be issued in respect of the suit property and warrants of attachment against the moveable assets of the Judgment Debtors. The relevant observations of the Executing Court in the impugned order dated 25th January, 2020 are extracted below:

“29. Perusal of the written statement of the DDA, filed in CS No.141/2018, indicates that the DDA has alleged in its written statement that the land of Khasra No, 1 etc./41, measuring 0-4 Bigha and Khasra No.1 etc./42/2, measuring 36 Bigha, has been acquired vide Award No.4/1969. It has been further mentioned that the said land was handed over to the DDA, on 27.06.1969 and it was placed at the disposal of the DDA for the purposes of development, vide notification dated 01.02.1972. It is also mentioned in the written

statement that after acquisition, vide Award No.4/1969, the land measuring 36 Bigha only was handed over to the DDA, on 27.06.1969 and the physical possession of 13 Biswa land and Khasra No.1 etc./42/2 was not handed over to the DDA by LAC/L&B, due to built up houses and constructions.

30. From the perusal of the various documents placed on record by the parties and specifically the Award No.4/1969 and its subsequent possession proceedings and the notification of Delhi Administration dated 01.02.1972 and copies of the khasra girdawari and khatani, pertaining to the suit land, it is clear that the possession of the suit land measuring 13 Biswa had never been taken by the DDA, as admitted in its written statement filed in CS No.141/2018 and the suit land was never handed over to the DDA for its development, vide 01.02,1972 and this land has always remained in possession of the private persons, who were its previous owners. Furthermore, the names of the previous owners of the suit property also find mention in the revenue records.

31. It is pertinent to mention here that the DDA has not initiated any proceedings till date, for taking the possession of the suit property from the decree holders. Even the judgment and decree dated 15.07.2014, passed in CS No. 174/14, has not been challenged by the DDA, before any court of law.

32. In these circumstances, I do not find any merit in the three objections, filed on behalf of the JDs No. 1,2 & 3 and therefore, the same are hereby dismissed being devoid of any merits.

33. Issue warrants of possession of the suit property and warrants of attachment against the movable assets of the JDs, on filing of PF, for the next date of hearing.

Decree holder to appear before the Ld. ACJ on 24.02.2020 for appointment of bailiff and to report before this court on 18.03.2020.”

15. Reliance has been placed by the Appellant on the written statement filed by the DDA in **Civil Suit No.141/2018** titled **Hem Prakash v. Paramjeet Kaur & Ors.**, and referred to by the Executing Court, and the same is on record. It clearly states that the acquisition of the land in question had taken place, and that the suit property forms part of the acquired land. The relevant part of the said written statement filed by the DDA is extracted herein below:

“1. The contents of this Para are of informative nature and therefore no specific reply from answering defendant is required. The plaintiff is under obligation to prove the averments made therein. It is however submitted that the land of Khasra No. 1 etc./41 (0-4 Biswa) & 1 etc.42/2 (36 B-13 Biswa) of Village Ghonda Chauhan- Khadar was acquired vide Award No. 4/1969. After acquisition the possession of the land 0-4 Biswa of Khasra No.1etc./ 41 and land measuring 36-00 Bigha of Khasra No. 1etc./42/2 was handed over to DDA by LAC / L&B on 27/06/1969. Further for its development it was placed at the disposal of DDA vide notification no. F8 (49) 63/ L&H dated. 01/02/1972 issued under the provision of Section 22(i) of Delhi Development Act,1957. The suit land forms part of the acquired land , physical possession of which was handed over to DDA by LAC / L&B. Neither plaintiff nor anyone else has any right , title or interest over the suit land being Government property.

Xxx xxx xxx

5-6: In reply of this para it reiterated that land of Khasra No. 1 e.tc./41 (0-4 Biswa) & 1 etc./42/2 (36 B-13 Biswa) of Village Ghonda-Chauhan Khadar was acquired vide Award No. 4/1969. After acquisition the

*possession of the land 0.04 Biswa of Khasra. No.1 etc. /41 and land measuring 36-00 Bigha of Khasra No. 1, etc. /42/2 was handed over to DDA by LAC / L&B on 27/06/1969. The physical possession of 0-13 Biswa of Khasra No. 1 etc./ 42/2 was not handed over to DDA by LAC / L&B department due to built up houses and constructions. Further for development ,the land was placed at the disposal of DDA vide notification no. F8(49) 63/ L&H dated 01/02/1972 issued under the provision of Section 22 (i) of Delhi Development Act, 1957. It is further submitted that suit land forms part of the acquired land possession which was handed over to DDA. Since the suit land is a government property therefore none else has any right title, interest over the same. Any construction raised upon Govt. land is absolutely illegal and unauthorized. It is further submitted that any kind of sale/ purchase in respect of Government land is absolutely illegal and of no consequences. It is further submitted that unauthorized colony known as Shastri Park where the suit land exists is under consideration for regularization before Govt. of NCT. It is further submitted that services and building activities of 155 unauthorized colonies including Shastri, Park near Seelampur are with MCB (EDMC) in pursuance of office order no. 3/bldg/ HQ/87 dated 02/03/1987 issued by MCD, Building Department (HQ), Town Hall, **Delhi.**”*

16. In the above background of the case, the Executing Court has directed warrants of possession of the suit property and warrants of attachment against the movable assets of the Judgment Debtors to be issued.

17. The only submission of Mr. Thakur, Id. Counsel for the Appellant, before this Court is that the land in question belongs to the DDA. Thus, Respondents cannot claim possession of the suit property. On a specific query as to the purpose for which the said land is being used by the

Appellant, the response is that the Appellant is running a dairy farm in the suit property. The Appellant is enjoying the suit property without paying any use and occupation charges.

18. The case of the Appellant is that the land in question belongs to the DDA. The case of the Respondents is that the possession of the suit property was not taken over by the DDA, and hence, the DDA does not have any right in the land in question. In any event, the position as on today remains that the Appellant/Judgment Debtor has no right or interest in the suit property.

19. It is observed that the Appellant, is stated to have now filed a suit against the DDA in respect of the suit property. The said suit is not the subject matter of this appeal. In this appeal the only question is whether warrants of possession of the suit property and warrants of attachment against the movable assets of the Judgment Debtors were rightly issued or not. The Appellant is relying upon the alleged acquisition of the suit property by the DDA at the stage of execution proceedings. Thus, the Appellant cannot be allowed to remain quiet about the acquisition of the suit property which was in her knowledge as also continue to enjoy the possession of the suit property simultaneously, which as per her stand belongs to the DDA. The Appellant is also in breach of the orders passed by this Court in **RFA 383/2014** in respect of the deposit of Rs.10 lakhs as well as the payment of monthly use and occupation charges of Rs.40,000, due to which the stay granted has been vacated.

20. In the present appeal, which arises out of the execution proceedings this Court does not deem it appropriate to go beyond the decree dated 15th July, 2014. This Court is of the opinion that the DDA is well within its

rights to raise any objections which it may have *qua* the Decree Holder being handed over the suit property pursuant to the impugned decree. Since the stand of the Appellant herself is that the land belongs to DDA, the execution of warrants of possession of the suit property and warrants of attachment against the movable assets of the Judgment Debtors cannot be obstructed or hindered by the Appellant in any manner. The warrants of possession and warrants of attachment would be liable to be executed in accordance with law. However, it is made clear that the bailiff would not handover the possession of the suit property to the Decree Holder. The possession of the suit property shall vest with the Executing Court and the bailiff shall deposit the keys of the property with the Executing Court.

21. The DDA is hereby granted **8 weeks' time to file its objections** before the Executing Court. If the DDA files any objections, the Executing Court would adjudicate the same in accordance with law. After adjudication of the objections filed by the DDA, the Executing Court would proceed further in this matter, in respect of possession of the suit property as also the manner in which the moveable assets of the Judgment Debtors are to be dealt with.

22. The Id. Counsel for the Appellant has relied upon the judgment of the Supreme Court in ***Jaipur Development Authority and Others v. Vijay Kumar Data and another [Civil Appeal No. 7374/2003 decided on 12th July, 2011]*** to argue that a decree in respect of an acquired land is liable to be ignored. The said judgment and the legal position in respect of ***Jaipur Development Authority and Others (supra)*** shall be considered by the Executing Court while deciding the objections of the DDA.

23. The intent, at this stage is to safeguard the property itself. The question as to whether the decree holder is entitled to the same would be

considered by the Executing Court. Since the DDA was not a party to the suit, it deserves to be heard by the Executing Court. However, the Appellant has no right to remain in the suit property and the Respondents are permitted to move an appropriate application before the Appellate Court in **RFA 383/2014** in respect of Appellant's failure to pay the use and occupation charges.

24. The present appeal is disposed of in these terms. The Executing Court to proceed further in terms of this Order. All pending applications are also disposed of.

OCTOBER 25, 2021
Rahul/Aman/AD

PRATHIBA M.
SINGH
JUDGE

सत्यमेव जयते