

* HIGH COURT OF DELHI : NEW DELHI

EX. F.A.No. 10/2009 & CM Nos. 14173-76 of 2009

% Judgment reserved on: 01st December, 2009

Judgment delivered on: 23rd December, 2009

Mrs. Geeta Lamba,
W/o Shri Jagmohan Lamba,
R/o 22/21-22 (First Floor),
West Patel Nagar,
New Delhi- 110008

Also as:
OWNER/OCCUPANT,
21/42 (First Floor)
West Patel Nagar,
New Delhi- 110008.

....Appellant

Through: Mr. A. K. Singh, Sr. Adv. with
Mr. J. K. Sharma, Adv.

Versus

Sushil Kumar Lamba,
S/o Late Shri Prem Singh Lamba,
22/21-22 (Ground Floor)
West Patel Nagar,
New Delhi-110008

....Respondent.

Through: Nemo

Coram:
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed against order dated 24th September, 2009, passed by Additional District Judge, Delhi, in Execution No. 30/2009 titled as “Sushil Kumar Lamba Vs. Mrs. Indu Valecha”.

2. Vide impugned order, objections filed by appellant under Order XXI Rules 97 & 99 read with Section 151 of Code of Civil Procedure (for short as ‘Code’) were dismissed.

3. Brief facts are that Sh. Sushil Kumar Lamba (respondent-herein), filed a suit for possession of premises no. 21/42 (First Floor), West Patel Nagar, New Delhi as well as recovery of arrears of rent against Mrs. Indu Valecha. Respondent case is that he is the sole, absolute and exclusive owner of property in question, while Mrs. Indu Valecha is the lessee in respect thereof, on a monthly rent of Rs.13,000/- (Rupees thirteen thousand).

4. Respondent’s suit was decreed, vide judgment dated 6th June, 2009, passed by Sh. D. K. Malhotra, Additional District Judge, Delhi.

5. In execution proceedings, appellant filed objections stated that respondent under the cover of executing orders obtained in the execution case, has broke open the lock fixed by appellant and fixed his own lock, in collusion with bailiff. Respondent was well aware, that Mrs. Indu Valecha-Judgment Debtor was not in occupant of the premises. It is the appellant who owned, possessed and actively in use of the premises prior to the institution of the execution proceedings. Respondent being well aware of the appellant’s ownership and possession, in respect of the premises, in fact has played fraud on the appellant, as well as on the Court. Appellant owns this premises by virtue of sale deed dated 7th July, 2005.

Respondent assisted by his friends and goons and bailiff, threw the appellant out of the premises on 2nd September, 2009 and has placed his own lock.

6. In reply to these objections, it is stated by respondent (Decree Holder) that appellant/objector has no locus standi nor has any legal and valid right, title or interest in the property in question. Appellant is a stranger and could resist or institute a case under Order XXI rule 58 of the Code for adjudication of her rights, title or interest in the property and need not wait till she is dispossessed. Respondent has not dispossessed the appellant. Therefore, she has no right to challenge the execution proceedings. If appellant was in possession, the adjudication is to be under rule 97 of Order XXI of the Code and incase dispossessed, adjudication is to be made under Rule 99 of Order XXI of the Code. Appellant does not fulfill any of those requirements, she is only a trespasser.

7. It is further stated that Judgment Debtor, vide order dated 2nd November, 2006 has been restrained from creating third party interest or parting with possession till disposal of the suit. Even if she had done so, as alleged by the appellant, then any such deal was illegal and not binding upon the decree holder.

8. Appellant also moved an application under Order 1 rule 10 of the Code, for her impleadment as a co-plaintiff on the ground, that she had purchased the suit property. That application was rejected by the Court.

9. It is contended by learned counsel for appellant that, objections have been decided without affording any opportunity to the appellant who has become owner of the property, vide registered sale deed dated 7th duly, 2005. The impugned order is a non speaking, non-reasoned one, in as much as it does not

deal with and decide upon issues raised in the objection petition. Respondent admits in his reply that property was in occupation of the appellant from 7th March, 2009 onwards.

10. Other contentions that appellant is staying in the property on surrender of tenancy by the occupant of the property to the owner, recorded in proceedings taken on 20th March, 2009 in suit No. 180/2008 titled “Smt. Geeta Lamba Vs. Smt. Indu Valecha & Ors.”, wherein, respondent was one of the defendant and was present at the hearing, which took place on 20th March, 2009, in which appellant’s lawful occupation as of a owner, was in the knowledge of respondent.

11. In support of its contentions, learned counsel referred the following judgments;

- (i) ***H. Seshadri Vs. K. R. Natrajan and another, (2003) 10 Supreme Court Cases 449.***
- (ii) ***N. S. S. Narayana Sarma and others Vs. Goldstone Exports (P) Ltd. and others; (2002) 1 Supreme Court Cases 662.***

12. Appellant had filed objections under Order XXI Rule 97 and 99 of the Code, which read as under;

“97. Resistance or obstruction to possession of immovable property- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule(1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

“99. Dispossession by decree-holder or purchaser- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the

purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained”.

13. As per order XXI Rule 97 of the Code, only the “decree-holder” or “the purchaser of any property sold in execution of a decree”, can make application to the court complaining of resistance or obstruction.

14. In the present case, appellant is neither a “decree-holder” nor is “the purchaser of the property sold in execution of decree”.

15. Further, as per Order XXI Rule 99 of the Code “ any person other than the judgment-debtor who is being dispossessed of immovable property” can make an application under this provision.

16. As per report of the bailiff (copy of the same is on page 54 of the paper book) it states;

“The house hold goods of the Judgment Debtor were brought outside the premises and the property in dispute got vacated. The vacant possession of the property in dispute was handed over to the decree-holder”.

17. This report clearly shows that appellant was not in possession at that time.

18. In the year 2007, appellant filed an application under Order 1 Rule 10 sub Rule (2) of the Code, for being impleaded as a party in the suit. That application was rejected by the trial court. There is nothing on record to show that, appellant ever challenged that order. This goes on to show that appellant is having knowledge of the present litigation, since 2007.

19. In *H. Seshadri (Supra)*, the Court observed that;

“For the purpose of considering an application under Order 21 rules 99 and 100 CPC what was required to be considered was as to whether the applicant herein claimed a right independent of the judgment-debtor or not. A person claiming through or under the judgment-debtor may be dispossessed in execution of a decree passed against the judgment-debtor but not when he is in possession of the premises in question in his own independent right or otherwise”.

20. There is no dispute about principle laid down in this judgment. However, in the present case, as per bailiff report the appellant was not in possession of the premises in question. Trial court in impugned order observed;

“As the possession obtained by the defendant despite the stay order passed by this court and during the pendency of the suit between the parties, defendant has no right to object to or resist the execution of decree”.

21. Since appellant was never in possession of the premises in question at the time of execution of decree, no infirmity or ambiguity can be found in the impugned order. The present appeal is thus not maintainable and same is hereby dismissed.

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22. Dismissed being infructuous.

23. Trial court record be sent back.

23rd December, 2009
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V.B.Gupta, J.