

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

**Judgment Reserved on : 19<sup>th</sup> May, 2022.**

**Judgment Delivered on : 14<sup>th</sup> July, 2022**

+ **EX.P. 95/2018**

**SARVINDER SINGH & ANR.**

**..... Decree Holders**

Through: Mr. Abhishek Aggarwal, Advocate.

versus

**VIPUL TANDON**

**..... Judgement Debtor**

Through: Ms. Anita Sahani, Advocate for  
Objector Ms. Pallavi Parmar and Ms.  
Ritambra Kaushik, Advocates for  
applicant in E.A.165/2019 and  
IA166/2019

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

**E.A. 175/2019 (of Vikram Badhwar for placing on record additional facts), I.A. 297/ ( of the LRs of Late Shri Uday Vir Viraj u/O VI R 17 of CPC) and I.A. 298/2019 (of the Shakuntala Srivastava u/O VI R 17 of CPC)**

1. No opposition has been raised on behalf of the Decree Holder to the captioned applications.
2. For the reasons stated in the applications, the same are allowed.
3. The additional facts pleaded in E.A. 175/2019 are taken on record.
4. As prayed for in I.A. 297/2019 and I.A. 298/2019, the request of the

applicants for amendment of the prayer is allowed.

**E.A. 535/2018(of the Vikram Badhwar u/O-XXI R-99 r/w R-101 and 106 of CPC), EA 165/2019(of Shakuntala Srivastava u/O-XXI R-99, 100 & 101 of CPC), EA 166/2019(of Udayan Parmar & Ors u/O-XXI R-99, 100 & 101 of CPC), E.A.1395/2021 (of the Vikram Badhwar u/S 144 of CPC), E.A. 176/2019 (of the Vikram Badhwar u/S 151 of CPC) & E.A. 177/2019 (of the Vikram Badhwar u/S 151 of CPC for status quo ante)**

5. E.A. 535/2018 has been filed on behalf of the Objector/Vikram Badhwar, under Order XXI Rules 99, 101 and 106 of the Code of Civil Procedure, 1908 (CPC), seeking relief of status quo ante and stay of the warrant of possession issued by the Registrar General of this Court in respect of the three floors with lawn and terrace and four servant quarters in the property bearing No. 27, Rajpur Road, Delhi-110054 (suit property).

6. E.A.1395/2021 has been filed on behalf of Objector/Vikram Badhwar, under section 144 of CPC seeking payment of mesne profits and damages for wrongful dispossession and E.A. 176/2019 has been filed on behalf of Vikram Badhwar for restraining the Decree Holders from creating third party rights in the suit property and E.A. 177/2019 has been filed on behalf of Vikram Badhwar seeking restoration of possession of the third floor of the suit property.

7. E.A. 165/2019 and E.A. 166/2019 have been filed on behalf of the Objectors/ Smt. Shakuntala Srivastava and Late Shri Udayvir Viraj through legal representatives (LRs) respectively, under Order XXI Rules 99, 100 and 101 of the CPC seeking relief of declaration that there is a valid Sale Deed in their favour and the decree is inoperative against them and restoration of possession of the two servants quarters, part of the suit property.

8. No replies to the aforesaid applications have been filed on behalf of

the Decree Holders, only written submissions/additional written submissions have been filed.

**Case set up by the Objector/Vikram Badhwar HUF**

9. The case set up by the Objector/ Vikram Badhwar HUF is that:-
  - i. The father of the Objector purchased the ground and first floor of the suit property vide Sale Deed dated 6<sup>th</sup> September, 1988, from Dr. Satyendra Singh, the father of the Decree Holder, Sarvinder Singh, through Smt. Nirmal Satyendra Singh, the mother of the decree holder.
  - ii. The father of the Objector entered into an Agreement to Sell dated 29<sup>th</sup> August, 1993 with the mother of the Decree Holder for the purchase of the terrace of the suit property for a total consideration of Rs. 4,41,000/-. In terms of the said agreement, Smt. Nirmal Satyendra Singh accepted Rs.2,00,000/- as advance money for the purchase of the terrace of the suit property and a receipt was executed by her in favour of the father of the Objector. Thereafter, the possession of one room was given to the father of the Objector.
  - iii. The Judgment Debtor got the letters of administration in his favour in respect of the will of the mother of the Decree Holders vide judgment dated 13 August, 1997 passed by the District Judge.
  - iv. A Sale Deed dated 25<sup>th</sup> February, 2002 was executed by the Judgment Debtor in favour of the Objector, in respect of the terrace of the suit property, on payment of the requisite stamp duty and the balance consideration of Rs. 2,41,000/-.
  - v. The Objector carried out the construction on the terrace of the second floor of the suit property, which was purchased by him from the

mother of the Decree Holder, and shifted to the suit property in 2002.

- vi. In January 2002, a suit for permanent injunction in respect of the entire suit property including three floors, terrace with lawn and four servant quarters, was filed by the Decree Holders against the Judgment Debtor. The said suit was dismissed.
- vii. On 1<sup>st</sup> June, 2005, Sarvinder Singh, the Decree Holder, filed an application being MPC no. 93/2006 in PC No. 182/1996 before the District Court, for revocation of the letters of administration granted on 13<sup>th</sup> August, 1997. The said application was dismissed by the said Court vide judgment dated 24<sup>th</sup> April, 2007.
- viii. The Objector applied for a loan from Punjab National Bank (PNB) in 2008. The said bank carried out the due diligence of the suit property and thereafter, the Objector mortgaged the second floor of the suit property, which continues till date.
- ix. The Decree Holder filed FAO 242/2007 before this Court against the judgment dated 24<sup>th</sup> April, 2007 and vide order dated 14<sup>th</sup> January, 2011, this Court restored the probate case to its original number and directed the same to be decided afresh after giving opportunity to the Decree Holder to file objections. The Judgment Debtor preferred a Special Leave Petition against the order dated 14<sup>th</sup> January, 2011, which was dismissed vide order dated 15<sup>th</sup> April, 2011.
- x. The objections were heard afresh. The Decree Holder filed written submissions in support of his objections, wherein he clearly stated that the Judgment Debtor sold the second floor of the suit property along with terrace to one Vikram Badhwar, the Objector herein. The same fact was also stated by the Decree Holder in his evidence by

way of affidavit.

- xi. Thereafter, the Decree Holders filed a suit, being CS(OS) No. 2453/2015 before this Court in August, 2015 against the Judgment Debtor, but they did not disclose that a part of the suit property had been sold to the Objector by the Judgment Debtor. A site map describing the property was also filed and the third floor in the suit property was deliberately withheld.
- xii. The Decree Holder filed an application under Order XII Rule 6 of the CPC in the said suit, wherein it was stated that the Judgment Debtor has misused the property in question for about 20 years after the death of the mother of the Decree Holders and fraudulently sold some portions of the property owned by the mother of the Decree Holders and now the Decree Holders.
- xiii. Vide judgement dated 3<sup>rd</sup> May, 2016, the said suit was decreed partially by this Court directing that possession of the suit property be handed over to the Decree Holder by the Judgment Debtor. The RFA preferred by the Judgment Debtor was dismissed as withdrawn.
- xiv. The Decree Holder filed the present execution petition on 20<sup>th</sup> August, 2018. However, the Decree Holder failed to disclose the properties that had already been sold by the Judgment Debtor.
- xv. This court issued warrants of possession in respect of the three floors, lawn, terrace and four servant quarters of the suit property vide order dated 2<sup>nd</sup> November, 2018.
- xvi. On 6<sup>th</sup> December, 2018, the Objector along with his parents was dispossessed from the second and third floor of the suit property by the Decree Holder. The third floor neither was the part of the suit, nor

the execution petition.

**Case set up by the Objectors/ Smt. Shakuntala Srivastava and Late Shri Udayvir Viraj (through LRs) in EA No. 165/2019 and EA No. 166/2019**

10. Case set up by the Objectors/Smt Shakuntala Srivastava and Late Shri Udayvir Viraj (through LRs) is as under:-

- i. Late Shri Udayvir Viraj and Smt. Shakuntala Srivastava were both in occupation of two separate servant's quarters in the suit property as tenants since 1992 and 1994 respectively.
- ii. The Objectors purchased the two servant quarters in the suit property through two separate registered Sale Deeds on 15<sup>th</sup> February, 1999 from the Judgment Debtor.
- iii. After purchasing the properties in question, the Objectors applied for getting their names mutated in the municipal records and after verification, their names were mutated in the municipal and revenue records.
- iv. The Decree Holders were aware of the peaceful possession of the Objectors since 1992 and 1994 respectively. The Objectors were in possession on the basis of two distinct rights - one, as tenants from the year 1992 and 1994 respectively and second, as a bona fide purchasers since 1999.
- v. The Decree Holders in their evidence by way of an affidavit filed before the Court of Additional District Judge in the probate petition, acknowledged that the Judgment Debtor sold some portions of the suit property.
- vi. The said servant quarters were in peaceful and uninterrupted possession of the Objectors as owners from 1<sup>st</sup> August, 1999 till 6<sup>th</sup>

December, 2018, when they were illegally dispossessed by the Decree Holders.

**Submissions on behalf of the Objector/Vikram Badhwar HUF**

11. Based on the abovesaid averments, counsel for the Objector/Vikram Badhwar HUF has made the following submissions:-

- i. The Objector is the bona fide purchaser of the suit property under the Agreement to Sell executed by the mother of the Decree Holder. After the demise of the mother of the Decree Holder, her representative executed the Sale Deed in favour of the Objector. The Objector has been in possession of the suit property and has built further on the second and third floor to the knowledge of the Decree Holders.
- ii. At the time of the purchase of the property, the Judgment Debtor held a duly granted letters of administration dated 13<sup>th</sup> August, 1997. Therefore, the Objector took reasonable care to ascertain that the Judgement Debtor had power to make the transfer.
- iii. The Objector has throughout held himself to be the owner of the suit property. He also applied for mutation and has been paying the property tax regularly to the knowledge of the Decree Holders.
- iv. Despite knowledge of the possession of the Objector, the Decree Holders neither impleaded the Objector, nor described the third floor of the suit property in the suit for permanent injunction or the suit for possession filed by them. The Decree Holders as well as the Judgment Debtor have always known that one part of the suit property had been sold to Dr. Chandra Prakash Khatri, a servant room was sold to one Yogender Paul and Renu Aggarwal in the same circumstances as the Objector, yet no action has been taken against any of the said

purchasers by the Decree Holders.

- v. The Decree Holders did not take any action against the Judgment Debtor from 1994 until 2005 and against the Objector till date. The Sale Deed executed in favour of the Objector is valid till date and has not been challenged before any Court. The Decree Holders have given implied consent to the ownership of the Objector in the suit property. Reliance has been placed on Section 41 of the Transfer of Property Act, 1882 (TPA) to contend that where there exists an implied consent of the persons interested in the suit property, the transfer by an ostensible owner is not voidable on the ground that the transferor was not authorized to make it.

**Submissions on behalf of the Objectors/ Smt Shakuntala Srivastava and Late Shri Udayvir Viraj (Through LRs)**

12. Counsel for the Objectors/ Smt. Shakuntala Srivastava and Late Shri Udayvir Viraj through LRs, made the following submissions:-
  - i. The Objectors are the independent owners of two servant quarters, having perfected their respective independent legal titles with continuous and peaceful possession for the last nineteen years. The limitation period of twelve years has also expired for the Decree Holders to raise any claim with respect to the ownership of the suit property.
  - ii. The Decree Holders have never challenged the Sale Deed executed by the Judgment Debtor in favour of the Objector, nor have they obtained any injunction order against them at any point of time. If the Decree Holders propose to retain/ recover the possession while staking their claim over the ownership then they will have to first establish better



title than the Objectors.

- iii. Even if the legal title obtained from the Judgment Debtor is held to be defective owing to the reason of will being set aside, then also the Objectors have perfected their legal title by hostile, peaceful and continuous possession of the suit property through adverse possession, waiver, acquiescence and estoppel against the Decree Holder.
- iv. The Objectors have been dispossessed from the portion of the suit property occupied by them, without making them a party to the suit or the execution proceedings, despite knowledge of the rights being created in their favour by the Judgment Debtor. The decree was obtained based on misrepresentation and gross concealment of facts. Reliance has been placed on the judgment of the Supreme Court in *Ravinder Kaur Grewal vs. Manjit Kaur*, 2019 8 SCC 729, to seek recovery of possession.

**Submissions on behalf of the Decree Holders qua the objections filed on behalf of Objector/Vikram Badhwar HUF**

13. In response, Counsel for the Decree Holders filed reply to the objections and made the following submissions:-
  - i. The Objectors have been validly dispossessed from the suit property on 6<sup>th</sup> December, 2018 in compliance of the execution of the decree passed by this Court on 3rd May, 2016. First Appeal against the Judgment dated 3<sup>rd</sup> May, 2016 was preferred by the Judgment Debtor, which was dismissed by this Court.
  - ii. The Decree Holders are the owners of the suit property and it has been unambiguously held by various Courts and tribunals that the

Judgment Debtor and the Objector have no right in the suit property.

- iii. The Sale Deed was executed in favour of the Objector by the Judgment Debtor on 25<sup>th</sup> February, 2002. Doctrine of pendente lite transfer prescribed under Section 52 of the TPA shall apply and the sale would be void. Reliance in this regard is placed on the judgments of this Court in *Sunil Jain Vs. Zamiruddin*, 2017 (240) DLT 599 and *Haji Abdul Mateen (Decd.) through his LRs Vs. Sheikh Haji Firozuddin & Ors.* 2015(1) RLR 617.
- iv. Reliance is also placed on the judgment of Supreme Court in *Usha Sinha Vs. Dina Ram & Ors.*, (2008) 7 SCC 144, to contend that the transferees pendent lite cannot use the provision pertaining to filing of objections under Order XXI Rules 97 and 99 of the CPC, against the judgment and decree.
- v. Though the objections filed by the Objector are not maintainable and liable to be dismissed in view of the Section 52 of TPA, the claim of the Objector that he is a bona fide purchaser stands falsified as all the three documents of sale filed by the Objector are full of contradictions.
- vi. The receipt dated 15<sup>th</sup> August, 1993 shows that the amount of Rs. 2,00,000/- out of the total sale consideration of Rs. 4,41,000/- was paid by one, Ajay Badhwar and not by Vikram Badhwar. One of the witnesses appears to be the Judgment Debtor and the signature of the mother of the Decree Holders is forged. In the entire Sale Deed, there is not a whisper of the above stated receipt or the Agreement to Sell or the consideration of Rs.4,41,000/- paid to the Judgment Debtor.
- vii. The transaction of the sale is neither genuine, nor bona fide. Had the

sale been genuine, the Judgment Debtor would have stated so in his pleadings but he never admitted in any part of the litigation between him and the Decree Holders that he has sold a portion of suit property to the Objector. It was observed by this Court in the judgement dated 3<sup>rd</sup> May, 2016 that the Judgment Debtor has committed fraud upon the courts of law and the Decree Holders to usurp the suit property, belonging to the Decree Holders.

- viii. The Objector had the knowledge that the Decree Holders were the true owners of the suit property and also the fact that the Judgment Debtor was merely a caretaker of the Decree Holders.
- ix. The Objector after being dispossessed from the suit property wilfully defaulted in making payment qua the mortgage amount to PNB. The proceedings under SARFAESI Act, 2002, have been initiated against the Objector in respect of the aforesaid mortgage.
- x. Immediately, SA No.319/2019 was preferred by the Decree Holders and in the said SA, an order dated 13<sup>th</sup> December, 2019 was passed by the Debt Recovery Tribunal, Delhi (DRT) wherein, it has been observed that the Judgment Debtor had no right to sell the suit property. Therefore, the Objector cannot claim any ownership over the suit property.

**Submissions on behalf of the Decree Holders qua the objections filed on behalf of Objectors/Late Shri Udayvir Viraj through LRs and Shakuntala Srivastava**

14. In response to the objections filed by Objectors/Late Shri Udayvir Viraj through LRs and Shakuntala Srivastava, Counsel for the Decree Holders has made the following submissions:-

- i. The EA No. 165/2019 and 166/2019 have been filed by the Objectors on 27th March, 2019, which is much after the expiry of the prescribed period of 30 days. The Objectors have not sought condonation of delay in filing the said applications and hence, the same deserves to be rejected as being time barred.
- ii. The present applications are also liable to be dismissed in view of the forged and fabricated power of attorney of the Decree Holders filed by the Objectors. In 1988, the mother of the Decree Holders, was alive, hence they were not entitled to give any power of attorney.
- iii. In one of the documents, the attorney is being given by the Decree Holder and in the Will, the mother of the Decree Holders is shown to be the owner. Further, the Objectors have mentioned that the alleged power of attorney was shown to them in the year 1998, whereas it was executed in the year 1988. Accordingly, it can be said that the Objectors did not conduct any due diligence while purchasing the suit property.
- iv. There is no privity of contract between the Decree Holders and the Objectors and if the Objectors have any grievance at all, the same has to be only against the Judgment Debtor.
- v. The Objectors have not produced any documents to prove their possession since 1994.
- vi. The probate petition was filed by the Judgment Debtor on 20<sup>th</sup> May, 1996 and was finally dismissed on 20<sup>th</sup> March, 2014. The Objectors allegedly purchased the property in the year 1999. Accordingly, the doctrine of *lis pendens* as envisaged in Section 52 of the TPA is

applicable to the Objectors. Thus, their Sale Deeds are *void ab initio* and the Objectors have no right, title and interest in the suit property.

vii. The Decree Holders have been held to be the real owners of the suit property by virtue of succession on the death of their mother.

## ANALYSIS AND FINDINGS

### Maintainability

15. At the outset, it may be relevant to set out the relevant provisions of Order XXI of the CPC:

**“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.”*

**98. Orders after adjudication-** *Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-*

*(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or*

*(b) pass such other order as, in the circumstances of the case, it may deem fit. (2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor,*

or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

**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 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.

**100. Order to be passed upon application complaining of dispossession.-** Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or (b) pass such other order as, in the circumstances of the case, it may deem fit.

**101. Question to be determined.-** All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

**102. Rules not applicable to transferee pendent lite.-** Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.”

16. The aforesaid provisions were the subject matter of the discussion in the judgment of the Supreme Court in *N.S.S. Narayana Sarma & Ors Vs.*

*M/S. Goldstone Exports (P.) Ltd.*, (2002) 1 SCC 662. The relevant observations in the said judgment are set out below:

*“15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. **Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from “any person”. From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with “all issues” relating to such matters.** It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, **the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the Rule it is manifest that the legislature has***

**enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case.**”

17. In view of the above, the present applications filed by the Objectors under provisions of Order XXI Rules 99, 100 and 101 of the CPC are maintainable and this court, being the Executing Court has to adjudicate issues relating to right, title or interest in the property, while deciding the aforesaid applications.

18. It has been vehemently urged on behalf of the Objectors that the Decree Holders wrongfully took the possession of the suit property and that the Decree Holders should have followed the procedure laid down under Order XXI Rule 97 of the CPC to take possession of the suit property. Since the Decree Holders were aware of the settled position of the Objectors in the suit property, they could not have unilaterally taken possession of the suit property. In this regard reliance is placed on the judgment of the Supreme Court in *Brahmdeo Choudhary Vs. Rishikesh Prasad Jaiswal & Anr.*, (1997) 3 SCC 694. Relevant paragraph of the said judgment is set out below:

“8. A conjoint reading of Order XXI, Rules 97, 98, 99 and 101 projects the following picture:

**(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for**



possession could not be executed in the normal manner by obtaining warrant for possession under Order XXI, Rule 35 then the decree-holder has to move an application under Order XXI, Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order XXI, Rule 97, sub-rule (2) read with Order XXI, Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order XXI, Rule 98, sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order XXI, Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on the spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order XXI, Rule 99 CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order XXI, Rule 98, sub-rule (1) CPC the executing court can direct the stranger applicant under Order XXI, Rule 99 to be put in possession of the property or if his application is found to be substanceless, it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order XXI, Rule 98, sub-rule (1) would be deemed to be a decree as laid down by Order XXI, Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order XXI, Rule 101.”

19. The Objector further places reliance on the judgment of *Shreenath And Ors. vs. Rajesh And Ors.* MANU/SC/0268/1998. The relevant paragraphs of the aforesaid judgment are set out below:

*“9. So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the Executing Court. A party is not thrown out to relegate itself to the long drawn out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and the other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. Order 21 Rule 97, as aforesaid, conceives of cases where delivery of possession to the decree-holder or purchaser is resisted by any person. “Any person”, as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger.*

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11. *So far sub-clause (1) of Rule 97 the provision is the same but after the 1976 Amendment all disputes relating to the property made under Rules 97 and 99 are to be adjudicated under Rule 101, while under unamended provision under sub-clause (2) of Rule 97, the executing court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the court puts back a decree-holder in possession where the court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the court has to dismiss the decree-holder's application. Thus even prior to 1976, right of any person claiming right on his own or as a tenant, not party to the suit, such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved*

from a long litigation. So a tenant or any person claiming a right in the property on the own, if resists delivery of possession to the decree-holder, the dispute and his claim has to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he has to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the executing court itself finally under Rule 101.

12. We find that both either under the old law or the present law, the right of a tenant or any person claiming right on his own of the property in case he resists, his objection under Order 21 Rule 97 has to be decided by the executing court itself.

13. Rule 100 of the old law, as referred in the aforesaid Full Bench decision of the Madhya Pradesh High Court is a situation different from what is covered by Rule 97. Under Rule 100 (old law) and Order 99, the new law covers cases where persons other than the judgment-debtor is dispossessed of immovable property by the decree-holder, of course, such cases are also covered to be decided by the Executing Court. But this will not defeat the right of such a person to get his objection decided under Rule 97 which is a stage prior to his dispossession or a case where he is in possession. In other words, when such person is in possession the adjudication to be under Rule 97 and in case dispossessed adjudication to be under Rule 100 (old law) and Rule 99 under the new law. Thus a person holding possession of an immovable property on his own right can object in the execution proceeding under Order 21 Rule 97. One has not to wait for his dispossession to enable him to participate in the execution proceedings. This shows that such a person can object and get adjudication when he is sought to be dispossessed by the decree-holder. For all the aforesaid reasons, we do not find the Full Bench in Usha Jain [AIR 1980 MP 146 : 1980 MPLJ 623] correctly decided the law.”

20. In view of the legal position elucidated by the aforesaid judgments, I

am of the view that the Decree Holders ought to have filed an application under Order XXI Rule 97 of the CPC, so as to be put back in possession of the portions of the suit property in occupation of the Objectors. It is a matter of record that the Objectors have been in a settled possession of the aforesaid properties on the basis of registered Sale Deeds executed as far back in 1999 and 2002. The Decree Holders could not have unilaterally dispossessed the aforesaid Objectors, while seeking to execute the decree dated 3<sup>rd</sup> May, 2016 passed by this Court in a suit, where the Objectors were deliberately not made parties despite the Decree Holders/plaintiffs being aware of their possession of the aforesaid portions of the suit property. Even after the decree was passed, no legal notice was served on the Objectors to vacate the property, nor were they made parties in the execution proceedings and straightaway they were dispossessed from the portions of the suit property, of which they had been in a settled occupation for a long period of time.

**Knowledge of Decree Holders to the sale in favour of Objectors**

21. At this stage, it may be relevant to refer to the evidence on affidavit, filed on behalf of the Decree Holders on 9<sup>th</sup> December, 2013 in support of the application seeking revocation of letters of administration. Relevant paragraph of the said affidavit is extracted below:

**“11. That I say that the Petitioner after obtaining Probate by playing fraud upon the Hon'ble Court sold some portions of the property bearing no. 27, Rajpur Road, Delhi-54 which I came to know later. I thereafter through my attorney Mohd. Salim also filed a Suit for Permanent Injunction against the petitioner seeking restraining orders to restrain the petitioner from selling the remaining property bearing no.27, Rajpur Road, which was in his possession and an interim order was passed in my favour**

**but despite the stay, the petitioner sold second floor of the house with terrace to one Mr. Vikram Badhwar and contempt proceedings are pending against him in the Court of Ms. Snigdha Sarvaria, Civil Judge, Delhi.** *The petitioner has no respect for the law of the land and can go to any extent for his undue advantage. The conduct of the petitioner makes it clear that he had fear in his mind that the real owners of the property can any time come and take possession of the house, therefore he said whatever he could for his self interest.”*

22. It is clear from the said affidavit that the Decree Holders were aware in the year 2002 itself that some portions of the property were sold by Vipul Tandon. In fact, it is specifically stated in the said affidavit that Vipul Tandon had sold second floor of the property with terrace to Vikram Badhwar and the Decree Holders had also initiated contempt proceedings in respect thereof. Therefore, when the suit in which the decree under execution has been passed, was filed on 10<sup>th</sup> August, 2015, the Decree Holders were well aware of the sale in favour of Vikram Badhwar, but yet preferred not to make Vikram Badhwar a party in the said suit.

23. There is merit in the submission of the Objector that no mention in the suit was made with regard to the third floor of the suit property, which was constructed by Vikram Badhwar after purchasing the Second Floor along with terrace rights under the Sale Deed dated 25<sup>th</sup> February, 2002. Being aware of the sale of the second floor along with the terrace in favour of Vikram Badhwar, the Decree Holders cannot feign ignorance about the existence of the third floor. In fact, the decree in question does not even mention the third floor of the suit property and yet in execution proceedings, the Decree Holders have proceeded to take possession of the third floor of the suit property in an unlawful and mala fide manner.

24. Admittedly, the Decree Holders visited India in 1999 and 2002 and ought to have exercised due diligence to know of the possession of the Objectors in EA 165/2019 and EA 166/2019. Having been aware of the portions of suit property having been sold by Judgment Debtor in favour of third parties, including the said Objectors, the Decree Holders should have initiated appropriate legal proceedings to challenge the aforesaid Sale Deeds and claim ownership/possession in respect of the aforesaid portions of the suit property. However, no such steps were taken by the Decree Holders and even in the suit filed in 2015, the said Objectors were not made parties and no challenge was made to the Sale Deeds in their favour. Clearly, the conduct of the Decree Holders in dispossessing the Objectors without following the due process of law was unlawful as well as mala fide.

#### **Effect of Revocation of Letters of Administration**

25. It has been submitted on behalf of Objectors that they had bona fide entered into Sale Deeds on the basis of letters of administration granted in favour of the Judgment Debtor. The revocation of letters of administration happened much later. In support of the contention that revocation of a grant of letters of administration would operate prospectively, reliance is placed by the Counsel on behalf of the Objectors on the judgment in *Crystal Developers* (supra). Relevant observations of the Supreme Court in the said judgment are set out below:

*“29. Chapter III of Part IX deals with revocation of grants. Under Section 263, the grant of probate or letters of administration may be revoked if the proceedings to obtain the grant were defective in substance; or the grant being obtained fraudulently by making a false suggestion or by suppressing from the court something material to the case or if the grant was*

*obtained by means of untrue allegation or if the grantee has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of Part IX. Before us, it has been vehemently urged on behalf of the plaintiffs that the revocation of the grant of probate will make all intermediate acts ab initio void. Under Section 263, as stated above, grant of probate or letters of administration is liable to be revoked on any of the five grounds mentioned therein. One of the grounds as stated above is failure on the part of the grantee to exhibit/file an inventory or statement of account. **Similarly, the probate or letter of administration is liable to be revoked if the grant is obtained fraudulently. Can it be said that revocation of the probate on the ground of non-exhibiting an inventory or statement of account will make the grant ab initio void so as to obliterate all intermediate acts of the executor? If it is not ab initio void in the case of non-filing of inventory or statement of account then equally it cannot be ab initio void in the case of a grant obtained fraudulently. In other words, what applies to clause (e) of the Explanation equally applies to clause (b) of the Explanation. At this stage, we clarify that if the intermediate act of the executor is not for the purpose of administration of the estate or if the act is performed in breach of trust then such act(s) is not protected. However, acts which are in consonance with the testator's intention and which are compatible with the administration of the estate are protected. Therefore, on reading Sections 211, 227 along with Section 263, it is clear that revocation of the grant shall operate prospectively and such revocation shall not invalidate the bona fide intermediate acts performed by the grantee during the pendency of the probate.***

26. In the present case, the letters of administration were granted in favour of the Judgment Debtor on 13<sup>th</sup> August, 1997. Based on the aforesaid letters of administration, the Objectors purchased the portions of the suit property, on the basis of registered Sale Deeds. It was only in the year 2005, much after the Sale Deeds were executed, that the Decree Holders took steps for revocation of the grant of letters of administration, in which they

eventually succeeded. But, in light of the aforesaid observations in *Crystal Developers* (supra), the bona fide intermediate acts of the administrator for the purpose of administration of the estate have to be protected. Merely because the letters of administration granted in favour of the administrator were set aside at a later point of time, would not undo or invalidate intermediate acts performed by the administrator, while the letters of administration granted in his favour duly existed, unless the same are shown to be fraudulent or collusive. Whether there was collusion between the Judgment Debtor and the Objectors in executing the Sale Deed in favour of the Objectors can only be proved in a trial. On a *prima facie* view, there is nothing to show that there was collusion between the Objectors and the Judgment Debtor, so as to create any doubt with regard to the Sale Deeds in favour of the Objectors by the Judgment Debtor.

### **Adverse Possession**

27. The Objectors in EA No. 165/2019 and EA No. 166/2019 have taken an alternative plea based on adverse possession. It is the case of the Objectors that they continue to be in a settled hostile possession of the suit properties since 1999 and to the knowledge of the Decree Holders and yet the Decree Holders did not take any steps to challenge, in any manner, the settled possession of the Objectors. In support of his plea based on adverse possession, the Objector in EA No.166/2019 has placed reliance on the judgment of the Supreme Court in *L.N. Aswathama And Another Vs. P. Prakash*, (2009) 13 SCC 229, paragraph 18 of the said judgment is set out below:



*“18. We are however of the view that the decision in Mohan Lal [(1996) 1 SCC 639] relied on by the plaintiffs is inapplicable, as the defendant therein had pleaded that he was in possession, having obtained possession in part-performance of a sale agreement. As the defendant therein admitted that he came into possession lawfully under an agreement of sale and continued to remain in such possession, there was no adverse possession. This case is different, as the defendant did not contend that he entered possession under or through the plaintiffs. His case was that he was in possession as a tenant under Gowramma from 1962 and he became the owner by purchasing the plot from Gowramma in 1985. He alternatively contended that if Gowramma did not have title and consequently his claim based on title was rejected, then having regard to the fact that he had been in possession by setting up title in Gowramma and later in himself, his possession was hostile to the true owner; and if he was able to make out such hostile possession continued for more than 12 years, he could claim to have perfected his title by adverse possession. There is considerable force in the contention of the defendant provided he is able to establish adverse possession for more than 12 years. When a person is in possession asserting to be the owner, even if he fails to establish his title, his possession would still be adverse to the true owner. Therefore, the two pleas put forth by the defendant in this case are not inconsistent pleas but alternative pleas available on the same facts. Therefore, the contention of the plaintiffs that the plea of adverse possession is not available to the defendant is rejected.”*

28. It is clear from the reading of the above that a plea of adverse possession could be taken in the alternative, if the plea claiming ownership and the plea with regard to adverse possession is not based on inconsistent facts. In the present case, the main contention of the Objectors is based on title derived from the Judgement Debtor. However, if the title of the Judgement Debtor is held to be not valid, then the alternative plea is based on adverse possession. There is no inconsistency between the two

submissions. Therefore, the plea of adverse possession would be available to the Objectors, if they are able to establish their adverse possession for more than 12 years.

29. The Objectors rely on the judgement in *Ravinder Kaur Grewal* (supra) to contend that based on plea of adverse possession, the present application is maintainable. Relevant observation of the Supreme Court in *Ravinder Kaur Grewal* (supra) is set out hereunder:

“59 We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owners title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.”

30. In view of the above, the applications of the Objectors are

maintainable under Order XXI Rule 99 and 101 of the CPC as well as under Article 65 of the Limitation Act, 1963, for seeking declaration of their right, title and interest in the suit property on the basis of adverse possession.

31. The fact of the matter is that the Decree Holders were well aware about the possession of the third parties in the suit property in the year 2002 and this is evidenced by the fact that a suit for permanent injunction was filed on behalf of the Decree Holders in January, 2002. However, the Decree Holders deliberately did not implead any of such Objectors in the said proceedings, nor did they challenge the Sale Deeds executed in favour of such Objectors. Whether the objectors were in hostile possession of the property and whether they have acquired right, title and interest in the aforesaid portions of the suit property is a matter of trial.

**Applicability of Doctrine of *Lis Pendens***

32. Counsel for the Decree Holders has strongly relied upon the judgment of a Co-ordinate Bench of this Court in *Haji Abdul Mateen* (supra) to contend that a pendente lite transferee has no protection in terms of Section 52 of the TPA. He further contends that no exception has been carved out under Section 52 of the TPA. Therefore, there is an absolute bar against pendente lite transfer of a suit property, which can defeat the right of the successful plaintiff.

33. Counsel for the Decree Holders places reliance on Order XXI Rule 102 of the CPC to contend that nothing contained in Order XXI Rules 98 and 100 of the CPC would apply to an Objector to whom the Judgment Debtor has transferred the property after the institution of the suit in which the decree was passed. The aforesaid provision recognises the doctrine of *lis pendens* enshrined in Section 52 of the TPA. Therefore, if a person

purchases the property, which is a subject matter of a suit after the institution of the suit, doctrine of *lis pendens* would apply and the said purchaser cannot approach the Court under Order XXI Rules 98 and Rules 100 of the CPC.

34. Counsel for the Objector/Vikram Badhwar has placed reliance on the judgment of the Supreme Court in *Thomson Press (India) Ltd. Vs. Nanak Builders & Investors P.Ltd. & Ors.*, (2013) 5 SCC 396, to contend that pendente lite transfer of a property is not void ab initio. Such a transfer is effective in transferring the title to the transferee, but such title shall remain subservient to the rights of the transferor in the pending suit and subject to any decision that the Court may eventually pass. Relevant observations of the Supreme Court in the said judgment are set out below:

*“24. It is well settled that the doctrine of lis pendens is a doctrine based on the ground that it is necessary for the administration of justice that the decision of a court in a suit should be binding not only on the litigating parties but on those who derive title pendente lite. The provision of this Section does not indeed annul the conveyance or the transfer otherwise, but to render it subservient to the rights of the parties to a litigation. Discussing the principles of lis pendens, the Privy Council in the case of Gouri Dutt Maharaj v. Sukur Mohammed & Ors. AIR (35) 1948, observed as under:*

*“The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. The applicability of the section cannot depend on matters of proof or the strength or weakness of the case on one side or the other in bona fide proceedings. To apply any such test is to misconceive the object of the enactment and in the view of the Board, the learned Subordinate Judge was in error in this respect in laying stress, as he did, on the fact that the agreement of 8.6.1932, had not been registered.”*

35. In this regard, it may be relevant to take note of certain dates. On 13<sup>th</sup> August, 1997, the letters of administration were granted in favour of the Judgment Debtor. On 15<sup>th</sup> February, 1999, a Sale Deed was executed in favour of LRs of Late Shri Udayvir Viraj and Smt. Shakuntala Srivastava and on 25<sup>th</sup> February, 2002, a Sale Deed was executed in favour of the Objector, Vikram Badhwar. A suit for injunction is stated to have been filed on behalf of the Decree Holders against the Judgment Debtor in January, 2002. Merely because the said suit was pending when the Sale Deed dated 25<sup>th</sup> February, 2002 was executed by the Judgment Debtor, will not make the transfer void ab initio, but it shall remain subservient to the rights of Decree Holders in the suit filed by them. However, the said suit was ultimately dismissed in May, 2002. Once the suit was dismissed, the doctrine of *lis pendens* would also come to an end and it would not affect the validity of the Sale Deed dated 25<sup>th</sup> February, 2002 executed in favour of Vikram Badhwar. In the case of Objectors/ LRs of Late Shri Udayvir Viraj and Smt. Shakuntala Srivastava, the Sale Deed was executed in 1999, which was even before the filing of the said injunction suit.

36. The application for revocation of letters of administration granted in favour of Vipul Tandon was only filed on 1<sup>st</sup> June, 2005, much after the execution of the Sale Deeds, and the same was dismissed by the District Court on 24<sup>th</sup> April, 2007. Of course, the Decree Holders succeeded in the appeal filed by them and ultimately the letters of administration granted in favour of the Judgement Debtor were revoked. However, there was no *lis pendens* when the Sale Deeds were executed in favour of the Objectors. Therefore, the doctrine of *lis pendens* will have no application in the facts and circumstances of the present case.

### **Limitation**

37. As regards plea of the limitation taken by the Decree Holders in respect of objections filed by LR's of Late Shri Udayvir Viraj and Shakuntala Srivastava, the said Objectors have placed reliance on the judgment of the Supreme Court in *Shakuntala Devi Jain vs. Kuntal Kumari And Ors.* AIR 1969 SC 575, the relevant observations are set out below:

*“7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in refiling the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay, the Court may in its discretion condone the delay. As laid down in Krishna v. Chathappan [ILR 13 Madras 269, 271] “Section 5 gives the courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words “sufficient cause” receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.”.”*

38. Counsel for the Objectors, Shakuntala Srivastava and LR's of Late Shri Udayvir Viraj, submits that they were present in Court on 6th December, 2018, when this Court had granted time till 27<sup>th</sup> March, 2019 for the Objectors to file their objections. Inadvertently, the appearance of the counsel for the Objectors did not reflect in the order sheet. The fact that the Objectors, LR's of Late Shri Udayvir Viraj and Smt. Shakuntala Srivastava, were present in Court on 6th December, 2018, has been admitted by the Decree Holders in paragraph 2 of the EA No.258/2019 filed by them. Therefore, in the light of the aforesaid facts, the said Objectors would also be entitled to benefit of the order passed by the court on 6<sup>th</sup> December, 2018,

giving time to file their objections till 27<sup>th</sup> March, 2019. Admittedly, the objections were filed by the said Objectors on 19<sup>th</sup> March, 2019 vide EA No. 165/2019 and 166/2019 respectively.

39. Counsel for the Decree Holders has contended that very fact that the Objectors were in possession of certified copies of the proceedings between the Decree Holders and the Judgment Debtor, implies that the Objectors were aware of the said proceedings. The Objectors have placed on record certified copies of the proceedings initiated by the Decree Holders for revocation of the letters of administration as well as the judgment dated 14<sup>th</sup> January, 2011 passed in FAO No. 242/2007, whereby the appeal filed on behalf of the Decree Holders against the grant of letters of administration in favour of Judgment Debtor, was allowed. The certified copies placed on record by the Objectors shows that the Objectors were throughout aware of the legal proceedings and yet did not take any steps to implead themselves as parties.

40. This submission on behalf of the Decree Holders is vehemently opposed by the Objectors by contending that just because the certified copies of court proceedings had been placed on record, does not show that the Objectors themselves had applied for the said certified copies and were granted the said certified copies on the date so mentioned therein. As per the Objectors, the said certified copies of the proceedings before the District Court were obtained from the record in FAO No. 242/2007 filed before this Court, after the Objectors came to know of the present proceedings. In fact, if the Objectors knew about the filing of the suit in which the decree was passed, the Objectors could have straightaway approached the Executing Court by way of an application under Order XXI Rule 97 of the CPC.

41. I am in agreement with the submission of the Objectors that just because the aforesaid photocopies of the certified copies in respect of the challenge to the probate proceedings have been placed on record by the Objectors, does not show that the Objectors were aware of the said proceedings at the relevant point of time. It could be that the certified copies were applied by the Judgment Debtor and later photocopies of the same had been provided to the Objectors. There is nothing to show that the Objectors had obtained certified copies of these proceedings at the relevant point of time.

42. The Decree Holders have placed reliance on the order dated 13<sup>th</sup> December, 2019 passed by the DRT in SA No.319/2019, which was preferred by the Decree Holders, wherein it has been observed that the Judgment Debtor has no right to sell the suit property and therefore, the Objector cannot claim any ownership over the suit property. The aforesaid observations have been made by the DRT only at a *prima facie* stage and that too in a different proceeding. Therefore, reliance placed by the Decree Holders on the same is misplaced.

43. In view of the above discussion, I am of the view that the issues raised in the present applications can only be decided after evidence is led on behalf of the parties. Therefore, I proceed to frame issues.

EA 535/2018

- I. Whether the decree dated 3<sup>rd</sup> May, 2016 in CS(OS) 2453/2015 would be operative against the Objector in respect of the portions of the suit property occupied by him? (OP-Decree Holders)
- II. Whether the Sale Deed dated 25<sup>th</sup> February, 2002 was entered into between the Judgment Debtor and the Objector in a



- collusive or fraudulent manner? (OP-Decree Holders)
- III. Whether the Sale Deed dated 25<sup>th</sup> February, 2002 is otherwise valid and legally binding? (OP-Decree Holders)
- IV. Whether the Objector has acquired right, title and interest in the suit property on the basis of adverse possession? (OP-Objector)
- V. Whether the signatures of the mother of the Decree Holders on the Agreement to Sell dated 29<sup>th</sup> August, 1993, were forged? (OP-Decree Holders)
- VI. In the event the Sale Deed dated 25<sup>th</sup> February, 2002 in favour of the Objector is held to be not valid, whether the Objector is entitled to specific performance of the Agreement to Sell dated 29<sup>th</sup> August, 1993? (OP-Objector)
44. List before the Joint Registrar on 13<sup>th</sup> September, 2022.
- E.A. 165/2019
- I. Whether the decree dated 3<sup>rd</sup> May, 2016 in CS(OS) 2453/2015 would be operative against the Objector in respect of the portions of the suit property occupied by her? (OP-Decree Holders)
- II. Whether the Sale Deed dated 15<sup>th</sup> February, 1999 was entered into between the Judgment Debtor and the Objector in a collusive or fraudulent manner? (OP-Decree Holders)
- III. Whether the Sale Deed dated 15<sup>th</sup> February, 1999 in favour of the Objector is otherwise valid and legally binding? (OP-Decree Holders)
- IV. Whether the Objector has acquired right, title and interest in the property on the basis of adverse possession? (OP-Objector)
- V. Whether Objector was in lawful possession from 1994 to 2018 of

the portions of the suit property under a valid tenancy? (OP-Decree Holders)

45. List before the Joint Registrar on 13<sup>th</sup> September, 2022.

E.A. 166/2019

- I. Whether the decree dated 3<sup>rd</sup> May, 2016 in CS(OS) 2453/2015 would be operative against the Objectors in respect of the portions of the suit property occupied by them? (OP-Decree Holders)
- II. Whether the Sale Deed dated 15<sup>th</sup> February, 1999 was entered into between the Judgment Debtor and the Objectors in a collusive or fraudulent manner? (OP-Decree Holders)
- III. Whether the Sale Deed dated 15<sup>th</sup> February, 1999 in favour of the Objectors is otherwise valid and legally binding? (OP-Decree Holders)
- IV. Whether the Objectors have acquired right, title and interest in the property on the basis of adverse possession? (OP-Objectors)
- V. Whether Objectors were in a lawful possession from 1992 to 2018 of the portions of the suit property under a valid tenancy? (OP-Decree Holders)

46. List before the Joint Registrar on 13<sup>th</sup> September, 2022.

47. The Objectors and the Decree Holders to file their list of witnesses within six weeks.

48. The evidence by way of affidavit be filed by the Objectors and the Decree Holders within six weeks.

49. In light of the aforesaid discussion, I am of the *prima facie* view that the manner in which the Decree Holders took possession of the properties

from the Objectors was *ex facie* unlawful. The Decree Holders were aware of the sale in favour of the Objectors and also the possession of the Objectors in the aforesaid portions of the suit property. Despite this knowledge, the Decree Holders did not implead the Objectors in the suit filed by them. Even after the decree was passed, no legal notice was served on the Objectors to vacate the property, nor were they made parties in the execution proceedings and straightaway they were dispossessed from the portions of the suit property, of which they had been in a settled occupation for a long period of time. Therefore, the Objectors have made out a case for grant of status quo ante and are entitled to the restoration of possession of the aforesaid portions of the suit. Accordingly, it is directed that the possession of the aforesaid portions of the suit property, that was taken by the Decree Holders pursuant to warrants of possession issued by this Court vide order dated 2<sup>nd</sup> November, 2018 be restored to the Objectors, within a period of four weeks from today.

50. In view of the above, E.A. 176/2019, E.A. 177/2019 and E.A.1395/2021 stands disposed of.

**AMIT BANSAL, J.**

**JULY14, 2022**

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