

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1700 OF 2022

(Arising out of SLP (C) No. 19687 of 2019)

RAJBIR

APPELLANT (S)

VERSUS

SURAJ BHAN & ANR.

RESPONDENT (S)

J U D G M E N T

K. M. JOSEPH, J.

Leave granted.

1. While procedure is said to be the handmaiden of justice and substantial justice must prevail and the former may take the backseat, failure to follow the procedure laid down by law can result in grave miscarriage of justice to the judgment debtor and delay in the decree holder realising the fruits of the decree, all of which will be evident from facts of this case as we narrate them.

2. The appellant along with his brother agreed to sell certain property which we shall refer to, to the respondents-Suraj Bhan and Balraj on 28.01.2006. Thereupon, the respondents instituted a suit for specific performance. It was *inter alia* the case of the respondents that the brother of the appellant (Raj Kumar) had already

conveyed his part of the property in conformity with the agreement. The appellant, it would appear, had sold the property to a person who was arrayed as second defendant in the suit. The suit finally came to be decreed. In other words, a decree for specific performance was passed. The terms of the decree may be noticed as follows:

"35. In view of the findings recorded under above mentioned issues, suit of plaintiffs succeed and is hereby decreed with cost. A decree of declaration to the effect that agreement to sell Ex.D1 and sale deed Ex.D3 are illegal, null and void paper transaction and not finding on the rights of plaintiffs qua the suit land. A decree of possession by way of specific performance in the respective share of plaintiffs is hereby passed in favour of plaintiffs and against the defendants. The defendant no. 1 shall get the sale deed executed and registered in favour of plaintiffs in view of terms and plaintiffs, however, shall deposit the remaining part of sale consideration and within one month from the date of this judgment. In case of failure to get execute and register the sale deed by defendant no. 1, the plaintiffs will be at liberty to take the assistance of court in this regard."

Decree in terms thereto is as follows:

"Suit property: Land comprising in Khewat no. 346 Rect No. & Killa numbers 45 18.10.20/1.2364/3 4,62.78 14 & numbran 882.824 measuring 72 kanal 7 Marlas to the extent of 1/3 shares which comms out 24 kanal 2 Marlas situated in the revenue estate of village salahawas Tehsil & District Jhajjar.

This suit coming on this 4 day of January 2013 for for final disposal before me(Fkhruddin, Civil Judge (Sr. Divn. Jhajar) in the presence of Shri M.S Ahlawat counsel for the plaintiff Sh. Mahesh Kumar counsel for defendant no. 1. Sh. R.P. Suhag counsel for defendant no.2.

Suit presented on: 16.1.2007

It is ordered that suit of plaintiff succeed and is hereby decreed with costs. A decree of declaration to the effect that agreement to sell Ex D1 and sale deed Ex.D3 are illegal, null and void, paper transaction and no binding on the rights of plaintiffs qua the suit

land. A decree of possession by way of specific performance in the respective share of plaintiffs is hereby passed in favour of plaintiffs and against the defendants. The defendants no. 1 shall get the sale deed executed and registered in favour of plaintiffs in view of terms and conditions of agreement to sell Ex P2. The plaintiffs however, shall deposit the remaining part of sale consideration and within one month from the date of this judgment. In case of failure to get execute and register the sale deed by defendant no. 1, the plaintiffs will be at liberty to take the assistance of court in this regard."

3. The appellant was unsuccessful in challenging the aforesaid decree both in first appeal and, what is more, in the second appeal before the High Court. An attempt made before this Court culminated in the rejection of the special leave petition filed by the appellant. The respondents applied for execution. The appellant filed his objections. They are as follows:

"The judgment debtor No. 1/ Objecting party preferred an appeal before the Hon'ble High Court of Punjab & Haryana against the judgment and decree under execution vide RSA No. 2187/2013 which was dismissed by the Hon'ble High Court of Punjab & Haryana vide judgment and order dated 16.05.2018. Upon which the judgment debtor No. 1 moved a petition for special leave to appeal before the Hon'ble Supreme Court of India bearing No. 23053/2018 but the same was dismissed vide order dated 31.08.2018 and the judgment debtor No. 1 has no intention to file a review against the same.

The Judgment debtor No. 1 submits the following objections against the execution of the judgment and decree dated 04.01.2013:

1. That the decree dated 04.01.2013 cannot be executed because of the own act and conduct of the decree holders. In the decree dated 04.01.2013 the Hon'ble Civil Judge (Sr. Div.), Sh. Fakhruddin has clearly mentioned that the decree holders need to deposit the remaining sale consideration within one month from the dated of passing of the judgment and decree dated

04.01.2013. Relevant portion of the decree dated 04.01.2013 is reproduced below:

"The defendant No. 1 shall get the sale deed executed and registered in favour of the plaintiffs in view of the terms and conditions of the agreement to sell Ex-P2. The plaintiff however, shall deposit the remaining part of sale consideration within one month from the date of this judgment."

As per the terms and conditions of the agreement to sell Ex-P2 the total sale consideration for land measuring 42 Kanal and 11 Marla @ of Rs.12,25,000/- per acre amounts to Rs.65,15,469/- out of which Rs.2,50,000/- were paid as earnest money as such the remaining sale consideration amounts to Rs.62,65,469/- whereas the decree holders/plaintiffs allegedly have only deposited an amount of Rs.34,41,100/- which is deficient and there is no provision in the decree for later submission of the balance sale consideration or part payments of the same.

Prayer: It is therefore most respectfully prayed that in the present circumstances the application of the Decree Holders may kindly be dismissed with cost. Any other order which this Hon'ble court may deem fit and proper in the facts and circumstances of the present may also be passed in favour of the objecting respondent."

4. The objections of the appellant were rejected and dismissed with exemplary cost of Rs.3,000/-, by order dated 30.05.2019. The respondents had produced a draft sale deed. Based on the same, we notice that a further order dated 30.05.2019 came to be passed. The aforesaid order dated 30.05.2019 came to be challenged before the High Court. By the impugned order, the High Court dismissed the revision petition filed by the appellant. We may notice the following part of the impugned judgment:

".....
....."

It is evident from the decree that the suit property as mentioned was 24 Kanals 2 Marlas. Similar observations was also made in the RSA No. 2187 of 2013. The SLP preferred by petitioner/JD No. 1 was also dismissed. There is nothing to show that the decree was qua 42 Kanals 11 Marlas and not 24 Kanals 2 Marlas.

Learned counsel for the petitioner yet again insisted that the draft sale deed was not served upon him, which is a mandatory requirement. However, no such argument was raised by the JD/objector qua the same.

Learned counsel for the petitioner further submitted that an application was filed by the decree holder for appointment of Local Commissioner for execution of the sale deed in compliance of the impugned judgment and decree dated 04.01.2013 and it was allowed on the same day, whereas, it is mandatory to supply the copy of draft sale deed in compliance of Order 21 Rule 34(2) of the Civil Procedure Code, 1908.

However, a perusal of the order dated 30.05.2019 (Annexure P-4) passed by the Executing Court shows that a direction was issued to execute the sale deed in favour of the decree holder after getting the draft sale deed approved from the Court. Thus, the stage to hand over the draft sale deed had not arrived and the petitioner could have very well moved an application before the Court concerned to supply him the draft sale deed, which was never done."

5. We have heard Mr. Tarun Gupta, learned counsel for the appellant, and Ms. Neelam Singh, learned counsel for the respondents-decree holders.

6. Learned counsel for the appellant would point out that this case involves a clear contravention of Order XXI Rule 34 of the Code of Civil Procedure, 1908 (CPC). He would point out that the Court was duty bound upon the draft sale deed being produced before it by the decree holder, to make it over to the judgment debtor and to consider the objections of the judgment debtor, and thereafter follow the

procedure therein, and only thereupon, a sale deed as such could be executed. It is a salutary provision in law and it had been observed in its breach and it would cause miscarriage of justice. He points out that the respondents have not complied with the decree. It appears to be the case of the appellant *inter alia* that what is involved under the agreement to sale was about 66 Kanals. He would further point out that what transpired in the court as a result of the court ignoring the mandatory provisions of Order XXI Rule 34 may be noticed. He points out that on the basis of the draft sale deed which was produced, without giving an opportunity to the appellant to file his objections, a commissioner was appointed who immediately proceeded to execute the sale deed itself. He further emphasised that what actually happened was that the sale deed has been executed, which is again in departure from the terms of the decree. The sale deed takes in a different survey number. In this regard, he points out that the decree is relatable to Khewat 346. The agreement also relates to Khewat 346. Thus, the property which was agreed to be sold and which is the subject matter of adjudication and decree, was Khewat 346, whereas the sale deed, he points out is relatable to Khewat 448. In this regard, he would submit that the decree schedule property is part of a larger extent of the property and that the sale deed relates to property abutting the road. The result of the court not giving an opportunity to the judgment debtor as is required under Order XXI Rule 34 is that the execution court has countenanced the situation which is inconsistent with the terms of the decree.

7. *Per contra*, Ms. Neelam Singh, learned counsel for the respondents, would point out that what has been agreed to be sold and what is further the subject matter of the decree was only 24 Kanals and 2 Marlas; it was part of 48 Kanals and 4 Marlas. The appellant and his brother were the persons who had right over the same. The appellant's brother has already conveyed title and he has no right over the same. The appellant, by being called upon to execute the sale deed in respect of 24 Kanals and 2 Marlas, would not be prejudiced in any manner. She would point out that the respondents had produced the draft sale deed and it may have been the duty of the court to act in terms of Order XXI Rule 34. She further drew our attention to the proceeding at page 89 of the SLP paperbook (Annexure R1) to point out that the case was pending consideration before the court and it would have proceeded with the matter but for the stay granted by this Court.

FINDINGS

8. As far as the case relating to the exact extent which was the subject matter of adjudication is concerned, we do not think that it will be open to the appellant to revisit the matter by pointing out that the respondents had not complied with the decree in not depositing the consideration as provided therein. An attempt to fix the extent which the appellant is duty bound to convey by the decree in excess of 24 Kanals and 2 Marlas cannot be countenanced. We would, therefore, hold that the property which is the subject matter of the decree is 24 Kanals and 2 Marlas. The said property would be

comprised in Khewat No. 346 and it is a part of larger extent of 48 canals and 4 Marlas which, in turn, undoubtedly, is part of larger extent of 72 Kanals and 7 Marlas as referred to in the agreement. This is on the basis of the terms of the decree. It is, thereafter, that the respondents-decree holders filed execution proceedings.

9. Order XXI Rule 34 reads as follows:

"34. Decree for execution of document, or endorsement of negotiable instrument.-(1) Where a decree is for the execution of a document or for the endorsement for a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor object to the draft, his objections shall be stated in writing within such time, and the court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely-

"C.D., Judge of the Court of
(or as the case may be), for A.B. in suit by E.F.
against A.B."
and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the party ordered to execute or endorse the same.

(6) (a) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(b) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(c) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration."

10. The present is indeed a case where the decree in question provides for the execution of the document. The document is the document of sale as contemplated under the decree. Therefore, Order XXI Rule 34 is clearly attracted. It contemplates that if the judgment debtor neglects or refuses to obey the decree, the decree-holder is to prepare a draft of the document. In this case, the draft of the document is the draft sale deed. The draft of the sale deed must further be in accordance with the terms of the decree. It is to be delivered to the court. Thereupon, it is not required that the decree holder must directly deliver it to the judgment debtor. The procedure, therefore, is that the decree holder must make it available to the Court. Under Order XXI Rule 34, it becomes the duty of the court to thereupon cause the draft to be served upon the judgment debtor. There must be a notice inviting objections and the court may fix a time within which objections are to be filed. The judgment debtor may or may not object. Order XXI Rule 34 sub-rule (3) contemplates a situation where the judgment debtor objects. This

is to be contained in writing within the time provided. The court is duty bound to make an order approving or altering the draft as it thinks fit. This is of considerable importance having regard to what may follow subsequently on the strength of the decree. It is also important from the point of view of the role of the executing court which is to act in conformity with the decree.

11. It is well settled that the execution court cannot go beyond the decree. The decree must be executed as it is. Though, it is indeed open to the executing court to construe the decree; it cannot go beyond the decree. Therefore, when objections are filed pointing out in a given case that the proposed draft of the sale deed is not in conformity with the decree, it becomes the duty of the executing court to apply its mind and to make alterations in the draft, if needed, to make it in conformity with the decree. It will be thereafter that the decree holder is to deliver it to the court with the alterations if any made by the court, on proper stamp paper, if required and the execution of the document is effected by the court or the officer appointed. There are other formalities contemplated in regard to registration, all of which take place only after the procedure which is contemplated in Order XXI Rule 34 sub-rule (1) to (4) is followed.

12. In the facts of this case, we may notice the order which is impugned by the appellant before the High Court. We notice from the order that the proposed sale deed is seen taken on file. Thereafter the court refers to the application filed for appointment of a local

commissioner for the execution of the sale deed. The court refers to the decree bearing the date 04.01.2013. Thereafter, the court says that in the light of the present facts and circumstances the present application was allowed. The Civil Nazir of the Court was appointed as local commissioner who was directed to carry out the formalities for execution of the sale deed in accordance with the terms and conditions of the agreement after getting the approved draft sale deed from the court and report to this effect was to be submitted in the court well before 06.07.2019. This order is dated 30.05.2019. The sale deed came to be executed on 11.06.2019. Thus, this is a case where the court did not invite objections of the appellant to the draft sale deed but the application of the respondents for appointment of the commissioner to execute the sale deed is allowed, no doubt, taking note of the order of the same date, rejecting the objections of the appellant to the execution of the decree.

13. We must notice here that the objections on behalf of the appellant to the execution petition are not be confused with his objections to the proposed sale deed. That the appellant may have raised contentions to the effect that the decree itself is inexecutable and it was found meritless, would not absolve the court of its duty to proceed with the matter of considering the draft sale deed and the objections thereto under the provisions of Order XXI Rule 34. Subsequent to the impugned order dated 30.05.2019, without objections being invited and considered, the sale deed dated

11.06.2019 came to be executed which was registered. Therefore, we are of the view that this approach of the court in the matter of executing the decree in question clearly contravenes the salutary provisions of Order XXI Rule 34.

14. The complain of the appellant is sought to be buttressed with reference to the difference in the survey numbers as noticed by us earlier. While it is true that the court must be diligent in the matter of executing a decree passed after adjudication which spans a long period of time, it is also the duty of the court to execute the decree as it is and in accordance with law. Order XXI Rule 34 cannot be diluted and any such departure from the provisions can have highly deleterious consequences not merely *qua* the parties in question but also persons who come to deal with those parties in future. It can lead to further litigation. It is all of this which is sought to be avoided by bringing clarity and precision and execution must be in conformity with the adjudication contained in the decree.

15. In this case, the court is presented with a *fait accompli*. This is for the reason that putting the cart before the horse, as it were, without giving an opportunity to file objections to the draft sale deed, the order impugned was passed. The sale deed itself has been executed in terms of the draft sale deed without objections being called for and considered. Learned counsel for respondents points out that the case is taken up now to consider the objections by the court. The only course which is available to us is to direct the objections of the appellant to the draft sale deed to be considered.

It is, however, pointed out by Mr. Tarun Gupta, learned counsel for the appellant, that the copy of the draft sale deed has not yet been served on the appellant.

16. In such circumstances, we are inclined to pass the following order:

The appeal is allowed. We set aside the impugned order. We direct that the execution court Civil Judge (Senior Division), Jhajjar shall hand over the copy of the draft sale deed produced by the respondents within a period of two weeks from the date of production of copy of this judgment before the execution court. The appellant will be free to file his objections to the draft sale deed within a period of three weeks thereafter. Thereafter, after hearing the parties, a decision will be taken on the objections. Learned counsel for the appellant would point out that appellant will in case the sale deed is found to fall foul of the decree, bear the expenses which has been incurred by the respondents towards registration. If the sale deed is found to not be in conformity with the decree, fresh proceedings will be taken. Appropriate order will be passed by the court so that the decree is executed as is provided in the decree. Needless to say, in case the sale deed which has been executed on the strength of the draft sale deed is found to be violative of the decree, it will necessarily be set aside, and thereafter, a fresh sale deed must be executed by the execution court. The entire process shall be completed within four months from the date copy of the judgment is produced before the court.

Further proceedings based on the sale deed dated 11.06.2019 shall be kept in abeyance till a decision is taken by the Court.

The appeal is allowed as above.

The parties will bear their respective costs.

....., J.
[K.M. JOSEPH]

....., J.
[HRISHIKESH ROY]

New Delhi;
February 28, 2022.