

DLET010018852025



In The Court of Sh.Hem Singh,
District Judge-01, (East),
Karkardooma Courts, Delhi.

RCA DJ No.29/2025

CNR No.DLET01-0018852025

In the matter of :-

Smt. Seema Gupta
W/o Sh. Pankaj
R/o Property no.22, Upper Ground Floor,
Govind Park, Delhi-110051

.....Appellant

Versus

1. **Smt. Mamta Jain**
W/o Sh. Praduman Kumar Jain
R/o C-3/325, Yamuna Vihar
Delhi-110053.
2. **Sh. Pankaj**
S/o Sh. Mohan Aggrawal
R/o Property no.22, Upper Ground Floor,
Delhi-110051.

.....Respondents

Date of Institution	:	21.04.2025
Date of Reserving Order	:	19.02.2026
Date of Decision	:	16.03.2026

J U D G M E N T

a) The present appeal has been filed under Section 96 read with Order XLI of the Code of Civil Procedure, 1908, against the impugned order dated 19.03.2025, passed by the Ld. Execution Court in Execution No. 401 of 2023, whereby the objections/application filed by the appellant/objector under Order XXI Rule 58 CPC was dismissed.

b) Brief facts necessary for disposal of the present appeal are that respondent no.1 is the owner of the property bearing No. 22, First Floor, Govind Park, Delhi – 110051, measuring 50 sq. yards. The appellant herein is the objector in the objection petition filed under Order XXI Rule 58 CPC before the Ld. Execution Court. Respondent no.1 was the plaintiff in the main suit, whereas respondent no.2, who is the husband of the appellant, was the defendant in the said suit.

c) As per the case of respondent no.1/plaintiff, an Agreement to Sell dated 22.09.2018 was executed between respondent no.1 and respondent no.2 for sale of the suit property for a total sale consideration of Rs. 23,00,000/-. It is stated that on the same day a sum of Rs. 1,00,000/- was paid by respondent no.2 to respondent no.1 and it was agreed that a further sum of Rs. 2,00,000/- would be paid on 02.10.2018, and the remaining sale consideration was to be paid on or before 21.10.2018 at the time of delivery of possession and execution of sale documents.

d) It is further the case of respondent no.1 that the said agreement to sell could not be finalized and on 30.09.2018,

respondent no.2 approached respondent no.1 and expressed his inability to pay the further amount of Rs. 2,00,000/-. He requested respondent no.1 to let out the property for a period of three months, to which respondent no.1 agreed. Accordingly, respondent no.2 entered into the suit property as a tenant at a monthly rent of Rs. 7,000/-, excluding electricity and other charges.

e) It is alleged that respondent no.2 defaulted in payment of rent. Consequently, a legal notice was sent by respondent no.1 to clear the arrears of rent and vacate the suit property. However, despite expiry of the tenancy period, respondent no.2 failed to vacate the premises. Thereafter, respondent no.1 instituted a civil suit for recovery of possession and arrears of rent against respondent no.2.

f) In the said suit, respondent no.2 appeared and filed his written statement wherein he denied execution of any agreement to sell in respect of the “first floor” of the property. According to him, the agreement to sell pertained to the “upper ground floor”, and it was the upper ground floor which was taken on rent by him from respondent no.1. On the basis of the said plea, it was contended that the suit filed by respondent no.1 was not maintainable.

g) After appreciation of the pleadings and evidence on record, the Ld. Trial Court passed a judgment and decree in favour of respondent no.1/plaintiff and against respondent no.2/defendant.

Thereafter, respondent no.1 initiated execution proceedings for enforcement of the decree. During the pendency of the execution proceedings, the present appellant, who is the wife of respondent no.2, filed objections under Order XXI Rule 58 CPC, substantially raising the same plea that was taken by respondent no.2 in his written statement, namely that the agreement to sell was not executed in respect of the “first floor” and therefore the decree passed by the Ld. Trial Court in respect of the “first floor” cannot be executed in respect of upper ground floor which has been occupied by the appellant.

h) The Ld. Execution Court, after hearing the parties, dismissed the objections filed by the appellant/objector vide the impugned order dated 19.03.2025.

i) I have heard the submissions made on behalf of the parties and have carefully perused the record.

j) The principal contention raised by the appellant is that the agreement to sell was executed in respect of the upper ground floor, whereas the decree has been passed in respect of the first floor, and therefore the decree is not executable.

k) However, this Court finds that the said contention was already raised by respondent no.2/defendant in the written statement before the Ld. Trial Court and the same stood adjudicated after trial. The decree passed by the Ld. Trial Court has attained finality and the same cannot be reopened in

execution proceedings.

l) It is also settled law that an Executing Court cannot go behind the decree. The scope of inquiry in proceedings under Order XXI Rule 58 CPC is limited and cannot be used as a means to challenge the correctness or legality of the decree. The scheme of the Order XXI Rule 58 of the Code of Civil Procedure, 1908 makes it clear that a person resisting or objecting to attachment in execution must establish an independent right, title or interest in the attached property. The objector cannot be permitted to merely reiterate or support the defence of the judgment debtor which already stood adjudicated in the original suit. In the present case, the grounds raised by the objector are substantially the same as those earlier taken by the judgment debtor during the trial and the same were duly considered and rejected by the Ld. Trial Court while passing the decree.

m) It is not the case of the appellant that no agreement to sell was executed between her husband and respondent no. 1 or she has been occupying the suit property having independent rights therein and not as wife of respondent no. 2. Permitting the objector to raise identical pleas would, in effect, amount to reopening issues which have already attained finality and would indirectly allow the judgment debtor to re-agitate the matter in execution proceedings. Since the objector/appellant has failed to establish any independent right or interest in the attached property distinct from that of the judgment debtor, the Ld. Trial Court has rightly dismissed the same.

n) In view of this Court when the suit property is clearly identifiable, the mentioning of wrong floor is immaterial. In such circumstances, mere mentioning of an incorrect floor in the agreement to sell cannot be treated as a ground to invalidate the decree or to obstruct the execution proceedings. Ld. Executing Court rightly held that *there is no distinction between the first floor and upper ground floor of the suit property.*

o) In view of the above discussion, this Court finds no illegality, irregularity or infirmity in the impugned order passed by the Ld. Execution Court dismissing the objections filed by the appellant under Order XXI Rule 58 CPC.

p) Accordingly, the present appeal is devoid of merit and the same is hereby dismissed. The impugned order dated 19.03.2025 passed in Execution No. 401 of 2023 by the Ld. Execution Court is hereby affirmed.

No orders as to cost.

Copy of this order be sent to the concerned Court for information and record.

Appeal file be consigned to the Record Room.

TCR be sent back.

**Announced in the open
Court on 16.03.2026**

**(Hem Singh)
District Judge-01
(East)/KKD/Delhi**