

Roop Kumari (now deceased) through LR Sh. Bhushan Kr Vs. Vasudev

21.01.2026

Present: Sh. Tarun Diwan and Ms. Pyari, Ld. Counsels for the decree holder.

Sh. Rajeev Kumar Rai, Ld. Counsel for judgment debtor.

1. Ld. Counsel for the LR of DH submitted that LR of DH does not wish to file the reply to the objection of JD.

2. Ld. Counsel for judgment debtor submitted that JD does not wish to file reply to the application of the LR of DH to bring on record the fresh site plan of suit property.

3. Heard on both the aforesaid applications. Case file perused.

4. JD in his objection stated that this execution petition filed for taking possession of property/plot bearing plot no. J-21, Pandav Nagar, Near Mother Dairy, Patparganj, New Delhi. But no site plan was part of decree dated 09.09.2014. He further stated that bailiff visited the property for execution of warrant of possession but warrants could not be executed as the property found four storey constructed and occupied by independent occupant in their independent right. Accordingly, he prayed for dismissal of execution petition.

5. LR of DH in his application to bring on record the fresh site plan stated that in execution of warrants of possession Bailiff reached at the spot and found the changed complexion of the suit property by unlawfully raising construction which is not in consonance with the site

plan filed alongwith the plaint. The judgment debtor raised unlawful construction of the suit property during pendency of the proceedings so it is in the interest of justice that fresh site plan be taken on record for execution and satisfaction of the decree.

6. It is pertinent that plaintiff/Roop Kumari filed the suit for possession and damages on 10.08.1988. The said suit was decreed vide judgment dated 29.08.2001. Defendant/JD preferred the appeal bearing RFA no. 246/2008 and Hon'ble High Court vide its order dated 01.10.2012 remanded back the matter by allowing defendant's application under Order XLI Rule 27 CPC and after taking additional evidence, fresh judgment was passed on 09.09.2014 and suit was decreed for following reliefs:

*“In the light of my findings on the foregoing issues, the suit of the plaintiff is hereby decreed for possession in favour of the plaintiff and against the defendant no.1 in respect of the plot no. J-21, Pandav Nagar, Near Mother Dairy, Patparganj, New Delhi. The pendente-lite and future damages till the date of the delivery of the vacant possession of the suit property are also granted to the plaintiff @ Rs.1,000/- per month. The costs of the suit are also awarded in favour of the plaintiff.”*

7. The defendant preferred appeal i.e. RFA No. 674/2014 against judgment and decree dated 09.09.2014 before Hon'ble High Court of Delhi and Hon'ble High Court dismissed the appeal vide judgment dated 04.03.2025. Thereafter, defendant filed SLP against order of Hon'ble High Court and his SLP 9323/2025 was dismissed by Hon'ble Supreme Court vide order dated 09.04.2025.

8. During course of arguments, Court has put specific query to the Ld. Counsel for defendant whether defendant built the super structure on the suit property with the permission of Court to which he stated that no permission has taken. It is admitted and not in dispute that defendant built the super structure on suit property during pendency of the suit. Hon'ble Supreme Court in **B. Gangadhar vs. B.G. Rajalingam 1995 (5) SCC 238** has held in para 8 as under:

*“ \*\*\*Rule 35(3) of Order 21 itself manifests that when a decree for possession of immovable property was granted and delivery of possession was directed to be done, the court executing the decree is entitled to pass such orders incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or super-structure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes inexecutable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings.”*

9. In view of aforesaid discussion, the objection of the JD is hereby dismissed and the application to bring on record the fresh site plan of the DH is allowed and accordingly, fresh site plan is taken on record.

10. Issue warrant of possession of the entire structure of suit property as shown in fresh site plan and issue warrants of attachment of the movable assets mentioned in the list filed alongwith the execution petition.

To come up before the Ld. ACJ for appointment of Bailiff on 31.01.2026 and before this Court on 17.02.2026 on filing of PF alongwith affidavit no stay appeal.

(Ravinder Singh-I)  
District Judge-03  
East District, KKD Courts,  
Delhi, 21.01.2026