

CS 1749/16  
PRATIBHA SHARMA Vs. INDU SHEKHAR

*CNR No. DLSH01-001755-2016*

06.05.2024

Present: Ld. counsel for Plaintiff.  
Defendant no. 2 in person with ld. Counsel  
Sh. Gagan Kumar Singhal and Ms. Riya Verma.  
Sh. Manmohan Satija, Ld. counsel for Defendant  
no. 1.

Arguments already heard on application under Order  
39 Rule 2A CPC filed by the Defendant no. 2/applicant.

Ld. Counsel for applicant submits that the Plaintiff  
instituted the present suit initially in the year 2015 before the  
Hon'ble High Court of Delhi and vide Order dated 28.01.2015,  
Hon'ble High Court of Delhi directed the parties to maintain the  
status quo with regard to the title and possession of the suit  
property no. E-69, Jhilmil Colony, Delhi-110095 and property  
bearing Plot No. SJ-2/215 in Khasra No. 1376, situated at  
Shivalik Ganga Vihar Village, Rurki, District Haridwar,  
Uttarakhand.

Ld. Counsel for applicant further submits that Smt.  
Usha Sharma died on 12.08.2010, leaving behind three legal  
heirs i.e. late Smt. Poonam Pandit (mother of the applicant/D-2),  
Sh. Indu Shekar Sharma(D-1) and Smt. Pratibha Sharma  
(Plaintiff). Defendant no.1 had taken a plea that he is in  
possession of Will dated 05.04.2010 executed by Smt. Usha  
Sharma (deceased), by virtue of which, she had bequeathed the  
ownership of the suit property to the defendant no. 1 only and in

this regard, the applicant had filed a complaint dated 31.05.2020 at PS Vivek Vihar against Sh. Indu Shekhar Sharma/Defendant no. 1 stating that Defendant no. 1 had forged a Will dated 05.04.2010 with a sole motive of depriving the applicant/Defendant no. 2 and the Plaintiff out of the co-owned property left by the deceased Smt. Usha Sharma. Thereafter the applicant filed a complaint under Section 156 (3) Cr.P.C. r/w 200 Cr.P.C. bearing registration no. 3194/2020 before Ld. CMM (Shah), Karkardooma Courts, Delhi and a FIR was registered 556/2021 in under Section 420/467/468/471 IPC dated 30.09.2021 at PS Vivek Vihar.

Ld. Counsel for applicant/D-2 further submits that Defendant no. 1 filed an application under Order 39 Rule 4 CPC seeking vacation of stay order dated 28.01.2015 before the Hon'ble High Court of Delhi. Subsequently, in view of the court notification no. 27187/DHC/Orgn. Dated 24.11.2015, the case was transferred to the District Judge (Shahdara) vide Order dated 07.12.2015. On 01.09.2021, Defendant no. 1 stated before the court that he is not pressing the said application and the same was disposed off.

Ld. Counsel for applicant further submits that on 31.12.2023, the applicant /Defendant no. 2 visited the suit property situated at Haridwar and found that fresh construction has been carried out with all fittings and fixtures and upon enquiry, he came to know that Defendant no. 1 had sold the property to Smt. Sarita Sharma, Sh. Jag Bhagwan Sahni and Smt. Sapna, whose details are mentioned in para no. 11 of the

application. The complete particulars including seller details, purchaser details, date and other details of the registered sale deed, witnesses have been mentioned by the applicant in para no. 14 of the application. Photographs of the suit property of Haridwar showing status as on 31.12.2023 have also been filed by the applicant.

Ld. Counsel for applicant /D-2 submits that the Defendant no. 1 executed three Sale deeds in favour of the subsequent purchasers (as mentioned above) out of which, one sale deed was executed on 03.12.2020 in favour of Smt. Sarita Sharma and two sale deeds were executed on 25.11.2022 respectively in favour of Sh. Jai Bhagwan and Smt. Sapna. Ld. Counsel for applicant/Defendant no. 2 further submits that it has been mentioned in the above Sale Deeds that the property concerned is free from any encumbrances and no litigation is pending qua the same and that after the demise of late Smt. Usha Sharma, he is the sole owner of the suit property.

Ld. Counsel for plaintiff submits that despite the stay order being in operation, Defendant no. 1 had sold the part of property via registered Sale Deed dated 03.12.2020.

The defendant no.1 has opposed the application by stating that the defence of the defendant no. 2 in the present suit has already been struck off. The ld. Counsel for defendant no. 1 further submits that Defendant no. 3 has also filed a separate application under Order 39 Rule 1 & 2 CPC in suit bearing no. 314/2020 in respect of the same suit property and no interim orders have been passed in that matter till date. It is

further argued by the defendant no. 1 that the present suit was dismissed in default on 09.01.2018 by the Ld. Predecessor and with the said dismissal in default of the suit, all the interim orders had come to an end and that after the restoration of the suit, no interim orders were passed nor were automatically restored as per the Judgment of the Honble Apex Court in '**Varred Jacob v. Sosamma Geevarghese and Ors.**' AIR 2004 SC 3992. Ld. Counsel thus submits that Defendant no.1 had sold the property of Haridwar on 03.12.2020. It is further submitted by Ld. Counsel for defendant no. 1 that it is the prerogative of the Plaintiff to file such application and applicant/Defendant no. 2 cannot file the present application. Defendant no. 1/Respondent further submits that he is the joint owner of this property and the said stay order dated 20.01.2015 has not restrained him from selling his share in the property.

Per contra, Ld. Counsel for plaintiff has also relied upon the same Judgment of the Apex Court and contended that defendant no. 1/ respondent in relying on the minority view in **Varred Jacob (supra)**. Ld. Counsel further submits that majority view in the said Judgment passed by the Hon'ble Apex Court was that when a suit, which has been dismissed in default, stood restored, the interlocutory order of temporary injunction was also restored.

Ld counsel for plaintiff has also placed reliance upon Judgment dated 25.08.2023 passed by Hon'ble High Court of Delhi in '**Inderjit Kaur and Japneet Singh and anr.**'

I have gone through the said Judgment **Varred Jacob (supra)** (both *Minority view and Majority view*).

‘Minority view’ by Hon’ble Mr. Justice S. B. Sinha, in the relevant para of the Judgment is reproduced herein as under:-

*“I am, therefore, of the opinion that the interim order of injunction did not revive on restoration of the suit. The Court, however, would be well -advised keeping in view the controversy to be specifically pass an order when the suit is dismissed for default stating one interlocutory orders are vacated and on restoration of the suit, if the court intend to revive such interlocutory order, an express order to that effect should be passed.*

*I respectively descent with the opinion of the Hon’ble The Chief Justice of India.”*

Para no. 20.3 of the said Judgment (majority view) is reproduced herein as under:-

*“Much emphasis is laid on behalf of the Appellant on the observations in the minority opinion as regards the issue pertaining to the legal treatment of the right accrued in the interregnum. In our view, any attempt to read the minority opinion as laying down independently a distinct principle of law would not be a correct application of the law governing precedents. The submissions are not correct factually either, when we read the separate opinions holistically. The majority opinion is clear and categorical where the principles stated in several decisions of High Courts have been noticed with approval, while holding that the decree-holder was entitled to exclude the entire period during which temporary injunction was in operation; and it was obviously taken that when a suit, which had been dismissed in default, stood restored, the interlocutory order of temporary injunction was also restored because nothing to the contrary was indicated in the order of default dismissal or the order of restoration.”*

From the conjoint reading of the above, it is clear that the stay order dated 28.01.2015 was automatically got

restored when the suit was restored on 09.05.2019 after the same dismissed in default on 09.01.2018 and all the parties including Defendant no. 1 were under an obligation to maintain the status quo Order dated 28.01.2015.

Perusal of record shows that Defendant no. 1 had filed an application under Order 39 Rule 4 CPC (*filed in the year 2015*) seeking vacation of the stay order dated 28.01.2015. The said application was pending for disposal and on 01.09.2021, submission was made by Defendant no. 1 that he was not pressing the said application without informing the court that he had already executed one sale deed dated 03.12.2020 in favour of Smt. Sarita Sharma. Thereafter, the defendant no. 1 again executed two Sale Deeds on 26.11.2022 in favour of Sh. Jai Bhagwan and Smt. Sapna, which was also not informed to the court.

It is pertinent to note herein that Defendant no. 1/respondent has also not disclosed the above facts in the amended written statement filed by him on 13.10.2022. Thus, Defendant willfully despite having knowledge of the Order dated 28.01.2015 had sold the part of Property as mentioned in the sale deed 03.12.2020 and has committed contempt of Court.

From the above conduct of the Defendant no. 1/Respondent, this Court is *prima facie* of the view that there has been a willful disobedience by the Defendant no. 1/ Respondent of the status quo Order dated 28.01.2015 passed by the Hon'ble High court of Delhi.

A notice is hereby issued to the Defendant no. 1/ Respondent /Sh. Indu Shekhar to show cause as to why he should not be held liable under Order 39 Rule 2A CPC and also as to why further consequential orders should not be passed against him. Defendant no.1. shall file his affidavit in response to the above show cause notice within 04 weeks from today with advance copy to the other side.

**Defendant no. 1/Respondent is directed to deposit the entire consideration received in regard to the aforementioned three sale deeds within 04 weeks from today with this court in the form of auto renewable FDR from a Nationalized bank.**

Issue fresh notice of application under Order 1 Rule 10 CPC r/w Order 22 Rule 10 CPC to the proposed defendant on filing of PF, RC & speed post, returnable for next date. Steps be taken within 07 days.

Put up for compliance as above on 10.07.2024.

(Mohammad Ehtesham)  
District Judge -03(Shahdara),  
KKD Courts, Delhi  
06.05.2024.