

51 EX CIVIL 62/24  
ANUP KUMAR JHA Vs.  
VEERMATI

02.05.2025

Present: Sh. Paramveer Singh, Id. Counsel for DH along with DH  
in person.  
Sh. A.K.Singh, Id. Counsel for JD.

**ORDER ON OBJECTIONS FILED BY JUDGMENT  
DEBTOR NO. 1 (SMT. VEERMATI KADIAN) UNDER  
SECTION 47 OF THE CODE OF CIVIL PROCEDURE, 1908**

**INTRODUCTION:**

1. This Court is tasked with deciding the objections raised by Judgment Debtor No. 1 (JD-1), Smt. Veermati Kadian, against the execution petition filed by the Decree Holders (DHs) seeking enforcement of the judgment and decree dated 25.01.2024, passed by the Ld. Additional District Judge-05, South West District, Dwarka Courts, New Delhi, in Civil Suit No. CS DJ ADJ 201/2018. The DHs have filed their reply contesting these objections.

**SCOPE OF INQUIRY UNDER SECTION 47 CPC:**

2. Before delving into the specific objections, it is imperative to reiterate the settled legal position regarding the scope of inquiry permissible for an executing court under Section 47 of the Code of Civil Procedure, 1908. The jurisdiction of the executing court is circumscribed. It must execute the decree as it is passed and cannot venture into questions relating to the correctness or legality of the decree itself. The principle is *functus officio* regarding the merits of the concluded trial. An executing court cannot go behind the decree unless the objections fall into narrowly defined exceptions:

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- a. That the decree is a nullity, meaning it was passed by a court lacking inherent jurisdiction over the subject matter or the parties.
  - b. That the decree was obtained by fraud practiced upon the court, thereby vitiating the proceedings entirely. Mere allegations of fraud between the parties, which could have been or were adjudicated during the trial, do not suffice.
  - c. Questions relating to the execution, discharge, or satisfaction of the decree after it was passed.
3. The executing court cannot sit as an appellate court over the trial court's judgment, re-appreciate evidence, or correct perceived errors of fact or law in the decree. Such challenges must be raised in appeal or review before the appropriate forum.

**PRELIMINARY OBJECTIONS BY DH:**

4. The DH raised preliminary objections regarding maintainability, delay, and the JD pursuing parallel remedies (Review Petition). While the existence of alternative remedies doesn't automatically bar objections under Section 47 if they pertain strictly to executability, the grounds raised must fall within the limited scope outlined above. The objections will be assessed on their merits against this legal backdrop.

**ADJUDICATION OF JD'S OBJECTIONS:**

**Grounds 1, 2, 4, 6, 8, 9, 10, 11, 12, 15, 21, 22 (Regarding Agreements, Deeds, Consideration, Builder's Role, JD's Illiteracy, Non-production of Originals):**

5. The JD argues lack of privity with DHs; that sale deeds were signed by JD-1 (an illiterate lady) in disguise or forcibly without consideration from the builder (Rajesh Solanki); that the Collaboration Agreement is fake/incomplete/rejected/not shown in original/improperly stamped; that the initial sale deed by JD-1 is fake as flats didn't exist; that DHs obtained the decree without original documents which remained with the builder; that the builder acted fraudulently.

6. DHs contend these issues are between the JD and the builder, irrelevant to the DHs who purchased via registered deeds; the trial court considered the agreements and deeds; original documents were summoned and proved during trial; builder (Rajesh Solanki) was examined and cross-examined.

7. These objections constitute a wholesale attack on the factual findings and legal conclusions reached by the Ld. Trial Court after a full trial. The judgment dated 25.01.2024 extensively discusses the Collaboration Agreement, the sale deeds executed by JD-1, the subsequent sale deeds in favour of DHs, the testimony of the builder (PW-8), and the evidence relating to the transactions.

Allegations of fraud, lack of consideration, forgery, coercion, and the validity/interpretation of these documents were squarely before the trial court. The court specifically noted DW-1's (JD-1) contradictory stance and admissions regarding sale deeds, including the one favouring her daughter which mentioned stilt parking. Issues regarding the existence of flats at the time of the sale deed or the non-production of originals by the builder were matters of evidence evaluated during the trial. These objections do not suggest a lack of inherent jurisdiction or fraud on the court. They merely express disagreement with the trial court's appreciation of evidence and findings on merits. This amounts to seeking a re-trial or appeal, which is impermissible under Section 47 CPC. These objections are rejected as attempts to go behind the decree on grounds already adjudicated.

**Grounds 3, 14, 17, 18, 19, 23, 25 (Regarding Existence/Nature of Stilt Parking, Tenants, Ramp):**

8. JD asserts no stilt parking ever existed, only a basement and ground floor; denies demolishing any ramp; claims the area was/is occupied by tenants (Subedar Raghunandan, Col. Abhijeet) proving it's a habitable ground floor, not parking; claims ramp construction is physically impossible due to height (5.5 ft).

9. DHs argue the Collaboration Agreement and Sale Deeds mention stilt parking; the trial court specifically found stilt parking exists and is encroached upon; JD's admission of tenants in

the "ground floor/stilt parking" confirms encroachment; the decree directs removal of this encroachment; ramp feasibility is covered by the decree allowing construction subject to approvals.

10. The core dispute regarding the existence, nature, and rightful use of the stilt parking area versus it being a ground floor was the central theme of Suit No. 201/2018. The Ld. Trial Court dedicated significant analysis to this, considering pleadings, documents (including Collaboration Agreement clauses cited by DH), site plans, photographs, and testimonies. The court concluded, based on evidence (including DW-1's contradictory testimony and daughter's sale deed), that stilt parking exists for common use and directed removal of illegal construction/encroachment thereon. The JD's current assertion about tenants occupying a "one room set" in the "stilt parking/ground floor" area reinforces the finding of encroachment rather than negating the existence of the stilt parking area itself. The decree anticipates ramp construction feasibility by making it subject to necessary approvals. Challenging these fundamental findings of fact is impermissible in execution. These objections are rejected.

**Ground 5 (Police Complaints Ignored):**

11. JD alleges the trial court ignored police complaints filed by them.

12. DHs state JD failed to prove these complaints by summoning police witnesses during the trial.

13. The consideration of evidence, including police complaints (if placed on record and proved according to procedure), falls squarely within the trial court's domain. Whether they were ignored or given inadequate weight is a matter concerning the correctness of the judgment, challengeable in appeal. It does not render the decree non-executable. This objection is rejected.

**Ground 7 (Property Sealed/Booked by MCD, Sale Deed Date Discrepancy):**

14. JD claims the property's status with MCD (sealed/booked) and discrepancies in sale deed/stamp paper dates render the transactions invalid and the order impugned.

15. DHs state these are historical issues potentially cleared by the builder/JD, irrelevant to DHs purchasing later, and any date discrepancies should have been proven fatal during the trial.

16. Any legal consequences arising from MCD actions or alleged discrepancies in document dates on the validity of the title or transactions were matters for adjudication during the trial based on evidence presented. The JD has not shown how these alleged facts, even if true, deprive the trial court of its inherent jurisdiction or constitute fraud upon the court, making the decree a nullity. These are again challenges to the merits decided by the trial court. This objection is rejected.

**Ground 9 (Contradictory Findings on Stilt Parking Rights):**

17. JD finds it contradictory that the court recognized JD's rights/title but also granted rights to DHs over stilt parking.

18. DH clarifies the court granted common rights to flat owners (including potentially JD's daughter) and the decree enforces these rights against JD's interference.

19. The judgment aims to establish and enforce common rights associated with flat ownership as per the underlying agreements/deeds considered by the court. The decree restrains JDs from interfering with the peaceful possession and enjoyment of the common stilt car parking area and directs removal of illegal construction/encroachment. This signifies enforcement of shared rights against wrongful individual appropriation by the JDs. There is no inherent contradiction in recognizing underlying title (of JD-1 to the land originally) while upholding the common usage rights (including parking) contractually transferred with the flats. This objection misinterprets the decree and is rejected.

**Ground 13 (Errors in Judgment):**

20. JD alleges unspecified errors in the judgment dated 25.01.2024 render it incomplete and non-executable.

21. DH states only typographical errors were present, which were rectified by the court on 04.04.2024 upon application.

22. If the errors were merely typographical and have been corrected by the court that passed the decree, the decree stands rectified and is executable. If the JD alleges substantive errors of fact or law, the remedy is appeal or review, not objections under Section 47 CPC. The JD has not specified any error that renders the decree inherently non-executable or void. This objection is vague and rejected.

**Ground 16 (JD No. 2 Sadaram Kadian Not Cross-Examined):**

23. JD claims evidence of JD-2 was wrongly closed due to sickness, vitiating the order.

24. DH points out multiple opportunities, including one by the High Court, were given, but JD-2 failed to appear for cross-examination.

25. The closure of a party's evidence due to procedural default is a part of the trial process. The judgment dated 25.01.2024 records the circumstances leading to the non-reading of DW-2's evidence affidavit. This court cannot re-examine the correctness or justification of that procedural order passed during the trial. It does not affect the jurisdiction of the court or render the final decree a nullity. This objection is rejected.

**Ground 20 (Property transferred to JD No. 2 before DH purchase):**

26. JD alleges JD-1 transferred the property to JD-2, and DHs wrongly sued JD-1 without making JD-2 a party (implying improper constitution of suit).

27. DH states JD-2 (Sadaram Kadian) was Defendant No. 2 in the suit and is JD No. 2 here.

28. A perusal of the judgment cause title confirms that Sh. Sada Ram Kadian was indeed Defendant No. 2 in the original suit CS DJ ADJ 201/2018 and is Judgment Debtor No. 2 in this execution. The objection is factually incorrect and hence rejected.

**Grounds 17, 24 (Relating to parallel suit findings / Complaint dt 31.01.2014):**

29. JD refers to findings in the connected suit CS DJ ADJ 1089/2017 regarding basement rights and a complaint dated 31.01.2014 allegedly not read by the court.

30. The Ld. Trial Court passed a common judgment addressing both suits. The findings in one suit were made alongside the other. The decree in CS DJ ADJ 201/2018 (under execution here) stands independently regarding the stilt parking. Any specific complaint forming part of the trial record was for the trial court to consider. Raising these points now is an attempt to re-argue based on selective interpretation or alleged omissions by the trial court, falling outside the scope of Section 47 CPC. These objections are rejected.

**FINAL FINDING:**

31. The objections raised by the JD-1, Smt. Veermati Kadian, comprehensively fail to establish any grounds that would permit this executing court to refuse execution of the decree dated 25.01.2024. The objections predominantly re-agitate factual disputes and legal arguments that were considered and adjudicated upon by the Ld. Trial Court during the trial. The JD has not demonstrated that the decree is a nullity due to lack of inherent jurisdiction or that it was procured by practicing fraud upon the court. The objections are essentially an attempt to seek a review or appeal of the original judgment under the guise of objections to execution, which is impermissible in law and amounts to an abuse of the process of the court.

**CONCLUSION & ORDER:**

32. In view of the above reasoning, this Court finds no merit in the objections filed by the Judgment Debtor No. 1, Smt. Veermati Kadian, under Section 47 of the Code of Civil Procedure, 1908. The objections are hereby dismissed.

33. The execution petition shall proceed further in accordance with the law.

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34. List for further proceedings on 04.07.2025.

(SUMIT DALAL)  
District Judge-04  
South West, Dwarka Courts  
New Delhi/02.05.2025