

EX. 642/17

SATISH KUMAR BANSAL V. SUMAN TIWARI & ANR.

09.05.23

Present: Mr. S. P. Singh, Ld. Counsel for the Objector
Mr. Ayush Sharma, ld. Proxy counsel for DH

The matter has been listed for dealing with the objections filed by Sh. Rahul Tiwari and Sh. Pankaj Tiwari. Objectors are sons of the JDs. Objections came to be filed after warrants of attachment against the movable assets of the JDs to the extent of the decretal amount were issued twice but could not be executed since no movable assets worth attachment could be found at the address of the JDs. It needs a brief highlight at this stage that as per the execution application, the address of the JDs, who stand to each other in the relationship of husband and wife was mentioned as P-1534, Gali no. 15, Baljeet Nagar, Punjabi Basti, New Delhi.

Since warrants of attachment could not be executed, counsel for the DH on subsequent hearing had sought time to move an appropriate application to realise the decretal amount of Rs. 8,70,000/- . Thereafter, application came to be filed u/o. 21 rule 54 CPC seeking attachment of three immovable assets of the JDs as mentioned in the application. One of the properties so mentioned was the same address which has been mentioned in the execution application and on which warrants of attachment of movable assets of the JDs were issued twice. Copy of the said application was supplied to the Ld. Counsel for JDs.

Reply to the said application was filed by JD no. 2 wherein it was contended that the JD no.2 is a rickshaw puller and is living in a rented accommodation. It was further stated in the application that JD no.2 has an immovable property situated in District Azamgarh, Village Pahijanrampur, UP. In the reply to the application, it was further contended by the JDs that none of the three immovable properties mentioned in the application u/o. 21 rule 54 CPC of the DH i.e. property no. P1534, Gali no. 15, Baljeet Nagar, New Delhi; T-77, Punjabi Basti, Baljeet Nagar and property bearing no. 16/178 E Tank Road, New Delhi is owned by the JDs. Property bearing no. T77, Punjabi Basti, Baljeet Nagar was specifically contended to be a rented property. It was subsequently prayed on behalf of the JDs that application u/o. 21 rule 54 CPC be dismissed as the properties mentioned therein are not owned by either of the JDs and hence, could not be attached.

Subsequent to the filing of the abovesaid reply by the JDs, warrant of attachment was also issued against the bank account which was in the joint name of the JDs i.e. SBI, Delhi University Branch. In the meanwhile, application for attachment of immovable property of the JDs was kept in abeyance. As per the report received in regard to the attachment of bank account, the said account was lying closed since 07.04.2020. It needs a brief highlight that the abovesaid bank account was disclosed by the JDs in their affidavit of assets which was filed on 27.10.2017. As per the account statement of the abovesaid joint saving account of the JDs, the balance in the said account as on 30.11.2018 was 'zero'. Subsequently, fresh warrant of attachment was issued against movable assets of the JDs. However, the

same could also not be executed as there were no assets worth attachment in addition to the fact that as per the report of the Bailiff, JDs started to misbehave and abuse the Bailiff.

It was after issuance of the second warrant of attachment (which also could not be executed) that the present application came to be filed on behalf of the Objector Rahul Tiwari and Pankaj Tiwari u /o. 21 rule 54 CPC and rule 97 to rule 101 CPC.

In the briefly worded application moved by the Objectors, it has been contended on their behalf that Property no. 1534, Gali no. 15, Baljeet Nagar, New Delhi has been purchased by the objectors from their mother Suman Tiwari (i.e. JD No. 1) way back in January 2015. It was further contended that JDs are no longer residing at the given address and that household goods, which are lying in the abovesaid property exclusively belong to the applicant/ objectors. Arguments were thereafter addressed on behalf of the Objectors on the last date of hearing.

I have carefully considered the rival submissions. DH has strongly objected to the bonafide of the objectors contending that objectors being the sons of the JDs are helping JDs in trying to evade the execution of the decree. The objectors on other hand contend themselves to be the bonafide purchasers of the property bearing no. P-1543, Gali No. 15, Baljeet Nagar, New Delhi.

It needs a highlight that the documents which have been filed alongwith the objections and on the basis of which the objectors contended to be the joint owners of the property bearing no. P-1534, Gali No. 15,

Baljeet Nagar, New Delhi are unregistered documents i.e. Agreement to Sell, GPA, Will, affidavit of Sale and a receipt of Rs. 1 lac. Although there can not possibly be registration of the receipt of payment and affidavit of sale, but at least the GPA and Agreement to Sell should have been registered in order to pass on some ownership rights to the purported purchasers i.e. objectors in the present case. In the best understanding of the Court, unregistered agreement to Sell coupled with unregistered GPA is not sufficient to confer even *prima facie* ownership rights on the purported purchaser i.e. objectors herein. Consequently, the objections are dismissed. It is lamentable that DH has been waiting for over 6 years i.e. since 2017 to receive the decretal amount but the JDs have ensured that he is unable to do that. It would be appropriate to observe that even assuming the objector's contention to be correct to the effect that JDs are no longer residing in the said property and that the household articles are those of the objectors, in view of the findings returned above by this Court, it is to be held that abovesaid property is still in the ownership of the JD No. 1 Suman Tiwari. Consequently, issue warrants of attachment of property bearing no. P-1534, Gali No. 15, Baljeet Nagar, New Delhi on filing of PF within three weeks. The movable assets therein are however not to be attached. Ld. Counsel for DH is granted another opportunity to take steps for service of notice on JD no.2 of the application seeking his civil arrest. Steps be taken within four weeks.

To appear before the ACJ on 08.06.2023 and before this Court on 28.08.2023.

(Ajay Gulati-I)
ADJ-02, WEST/May 9, 23