



2025:DHC:1420



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 11th November 2024**
Judgment pronounced on: 5th March, 2025

+ CM(M) 915/2019 & CM APPLs. 27448/2019 (stay),
35545/2019 (interim order) and 42429/2024 (U/o 22 Rule 3
CPC.

DEVI CHARAN & ANR

.....Petitioners

Through: Mr. Jai Sahai Endlaw &
Mr. Ashish Kumar,
Advocates

versus

RANPAT SINGH & ORS

.....Respondents

Through: Mr. Varun Mehlawat,
Advocate.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present petition has been filed under Article 227 of the Constitution of India by the petitioners, challenging the order dated 25.04.2019, passed by learned Additional District Judge (Central), Tis Hazari Courts, Delhi in Execution Petition No. 1089/2018, titled "*Devi Charan & Anr. Vs. Ranpat Singh & Ors.*"

2. Brief factual matrix is that petitioner filed a Suit bearing No. 13547/2016, seeking decree for possession in respect of portion marked with letters 'E', 'F', 'G' & 'H' and shown in red colour in the



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site plan of property No. 1, Under Hill Road, Civil Lines, Delhi-110054, admeasuring about 305 sq. yards. The suit culminated in a decree dated 16.04.2018 in their favour, directing the respondents to handover the vacant and peaceful possession of the property i.e. land measuring 305 sq. yards in property No. 1, Under Hill Road, Civil Lines, Delhi, as shown in red colour in site plan Ex. PW-4/9 within a period of two months to the plaintiffs.

3. Respondents in their written statement, contested the claim on the ground that they had been in possession of 400 sq. yards of the suit property since 1937 and had acquired ownership right through adverse possession. The trial court, after examining the pleadings and evidence, rejected respondent's claim and decreed the suit in favour of the petitioners.

4. The decree was put into execution by the petitioners by filing Execution Petition No. 1089/2018, wherein, the learned trial court issued Warrants of Attachment. The respondents however raised objections regarding the measurement and description of the suit property. The trial court vide order dated 23.10.2018, dismissed the objections holding that in the judgment dated 16.04.2018, the site plan Ex. PW-4/9 filed by the plaintiff/DH stood proved as unrebutted by the defendants/JDs, who neither filed their own site plan to show the location and measurement of the land in their possession nor adduced any evidence in this regard, and therefore, the objections filed by the JDs were an attempt to re-agitate the case on merits.

5. Respondents, despite the decree, filed an application for review under Order 47 CPC leading to the passing of the impugned order



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dated 25.04.2019, whereby, the learned trial court directed the appointment of a Junior Engineer to measure the decreed premises and proportionately divide the front phase of the property, effectively modifying the decree. The relevant paras of the impugned order read thus:-

“2. Without going into the question related to the dimensions of the decreed land in possession of the JDs, and to simplify the execution proceedings, the bailiff is appointed to take possession of decreed premises measuring 305 sqr. yards in Property no.1, Under Hill Road, Civil Line, Delhi. The warrants of possession be issued on filing of PF by the DH.

3. In order to measure the decreed premises properly, the concerned area Junior Engineer (Building), North DMC, Delhi, shall help in measurement of the decreed premises measuring 305 sqr. yards, out of the total land in possession of the JDs in Property no.1, Under Hill Road, Civil Line, Delhi.

4. The measurement shall be carried out from the boundary of the DH, from point 'E' & 'F' as marked in the site plan Ex. PW4/9. The measurement shall be conducted in such a manner that the DH is given the possession of a rectangular shaped plot /land so far as is possible, and not in a triangular shape.

5. The front face of the decreed premises admittedly measures around 33.2 ft. from point 'E' to 'H' as shown in site plan Ex. PW4/9. Anyhow, the bailiff shall measure and give the proportionate front to the DH in relation to the total measurement of the land in possession of the JDs.

6. For example, suppose the total land in possession of the JDs measures 400 sqr. yards, whereas, the decree is for (suppose) 300 sqr. yards, the DH shall be entitled to $\frac{3}{4}$ (three fourth i.e. 75%) of the front.

7. The actual measurement of decreed land of 305 sqr. yards in relation to the actual measurement of the total land found in possession of the IDs shall be apportioned to the parties for the purpose of front face of the decreed premises.

8. In terms of above mentioned guiding directions, the bailiff shall conduct the measurement of the premises in possession of the IDs with the help of area I.E. (Building) and hand over the possession to the DH. The area I.E. shall be given honorarium of Rs.25,000/-, which shall be borne by the DH, by way of account payee cheque/demand draft.”



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6. Petitioners have challenged the impugned order on the following grounds:-

a) The execution court has travelled beyond its jurisdiction by directing apportionment which was neither sought in the suit nor granted by the decree.

b) The identification of the suit property has already been decided by site plan Ex. PW-4/9, which is part of the decree and any reassessment at the execution stage is impermissible.

c) That the executing court cannot go behind the decree or alter its scope but is bound to execute it as per its terms.

d) Respondent's objections regarding measurement had already been rejected vide order dated 23.10.2018 and therefore the subsequent review was impermissible and is an attempt to delay the execution.

7. The submission on behalf of the respondents has been that petitioners in their plaint claimed only 305 sq. yards of land and therefore the executing court is justified in ensuring that only the decreed portion to the extent of 305 sq. yards be handed over to the petitioners. It is argued that the executing court has merely facilitated the proper identification of the decreed premises.

8. Undisputedly, in their plaint, petitioners made prayer for grant of decree for possession in respect of the portion marked with letters 'E', 'F', 'G' & 'H', shown in red colour in the site plan of the property admeasuring about 305 sq. yards. In their written statement, respondents contested that the portion shown in red colour in the site



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plan was 305 sq. yards. They asserted that the portion of the property in their possession was 400 sq. yards and not 305 sq. yards, as mentioned in the plaint. They also disputed the correctness of the site plan. Learned trial court discussed such contentions of the respondents in Para No. 42 of the judgment, which reads thus:-

“42. Defendants no. 2 to 7, 10 & 13 asserted that the portion of property no.1, Under Hill Road, Civil Lines, Delhi, in their possession measured 400 sq. yards and not 305 sq. yards, as mentioned in the plaint. They also disputed the correctness of site plan Ex. PW4/9 filed alongwith the plaint. The defendants neither filed their own site plan to show the location and measurement of the land in their possession, nor adduced any evidence in this regard. Thus, the site plan Ex. PW4/9 was proved as unrebutted by the defendants.”

9. Since the respondents did not seriously contest the area of the property and did not furnish an alternative site plan or any evidence in support of their contention, the issue of correct measurement cannot be re-agitated in the execution proceedings by the respondents, as the same already stood decided and would amount to asking the execution court to go behind the decree, which is not permissible under the law.

10. As per order 7 Rule 3 CPC where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers. In the present case, petitioners specified such boundaries as 'E', 'F', 'G' & 'H', as shown in red colour in the site plan Ex. PW-4/9. Such identification of boundaries is sufficient identity of the property, even though, the size of the property described as 305 sq. yards was ultimately found by the bailiff to be 400 sq. yards.



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11. Since the petitioners obtained decree of possession of the land identified as 'E','F','G' & 'H' in the site plan Ex. PW-4/9, the decree must be executed in terms of the same even though the actual area within that boundary exceeded the area mentioned in the plaint. The executing court's power is limited to enforcing the decree as it stands. Any modification or apportionment at this stage would amount to re-adjudication, which is beyond the scope of execution proceedings. The direction for measurement and proportional division in the impugned order introduces an element not envisaged in the decree, thereby, exceeding the jurisdiction of the execution court. The executing court ought to have interpreted the decree in a meaningful manner by directing that the possession of the entire premises as demarcated as 'E','F','G' & 'H' in the site plan Ex. PW-4/9 be delivered to the petitioners, and more so, in the light of the fact that respondents objections regarding the measurement were already dismissed by the trial court in its order dated 23.10.2018. Raising similar objections again amounts to an abuse of process of the Court.

12. In view of the above discussion, the impugned order dated 25.04.2019 is hereby set aside to the extent it directs proportional apportionment of the decretal premises. Petition is allowed with directions to the executing court to ensure that possession is delivered strictly in conformity with the boundaries marked in the site plan Ex. PW-4/9 annexed to the suit. The trial court shall pass the necessary orders for the delivery of possession accordingly.



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13. No orders as to cost.

RAVINDER DUDEJA, J.

March 05, 2025

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