

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

E.A.No.347/2005 in Ex.P.No.95/2004

Reserved on: 14.01.2008

Date of Decision: 01.02.2008

Punjab National Bank
Through: Mr. S.K. Pruthi, Advocate

... Decree Holder

Versus

Sh. Inder Bhushan Kohli and Ors.
Through: Ms. Kamalaksi Singh, Advocate

... Judgment Debtor

JUSTICE SHIV NARAYAN DHINGRA

ORDER:

E.A.No.347/2005

1. By this application under Section 47 of CPC, applicant has raised objections against the attachment of property/flat no.31-A. Ground Floor, Block A-1-A Janakpuri, New Delhi. The applicant, Kunta Devi has claimed herself to be owner of the property.

2. Brief facts relevant for the purpose of deciding the application are that in suit no. 93/94 a decree was passed against Sh. Inder Bhushan Kohli, Smt. Uma Kohli and Sh. Pulkit Kohli on 16.12.2003 and in execution of the decree the property in question was sought to be attached. A notice of attachment was issued by this Court, whereafter objections have been filed by the applicant. It is stated by the applicant that this property was allotted to Inder Bhushan Kohli vide allotment dated 31.5.1984 and Inder Bhushan Kohli sold the flat for valid consideration to one Sh. C.L. Kapoor son of Sh. Dhyan Chand Kapoor on 4th October, 1993 for a sum of Rs.1,90,000/-. Mr. C.L. Kapoor sold the flat to the applicant on 13.10.1995 for consideration of Rs.2,25,000/- and executed various documents like agreement to sell, power of attorney, possession letter, etc., etc. The applicant is a bonafide

purchaser of the property and had been enjoying the property without any interference from any party since October, 1995. She had been in possession of the property since 1995 and the property does not belong to judgment debtor therefore this cannot be attached or sold in execution. Along with this application, there is an affidavit of the objector testifying to the facts. The application is also accompanied by copies of documents viz.: i) possession letter issued in favour of Inder Bhushan Kohli on 2.6.1984, ii) payment receipt showing payment of amount by Inder Bhushan Kohli on 18.5.84, iii) an agreement to sell by Inder Bhushan Kohli in favour of C.L. Kapoor executed on 4th October, 1993, iv) a receipt of payment of Rs.1,19,000/- by C.L. Kapoor to Inder Bhushan Kohli of the same date, v) Another agreement to sell executed on 13th October, 1995 by C.L. Kapoor in favour of applicant, Kunta Devi, vi) a receipt of payment of Rs.2,25,000/- by Kunta Devi to C.L. Kapoor, vii) Ration card of the applicant at the same address issued on 23rd March, 1998 and viii) election card issued on 6th April, 2002.

3. In reply to the application, it is stated by the decree holder that though the applicant was not a party to the suit, the property in question is not owned by the applicant and is owned by the judgment debtor. The judgment debtor was employed with the decree holder/bank and had taken housing loan for allotment of the house. A sum of Rs.1,12,865/- was paid by the decree holder directly to DDA on behalf of judgment debtor no. 1 and it was specifically told to DDA that decree holder had financed the flat. DDA was requested to send the perpetual lease deed to the bank for creation of equitable mortgage. Thus decree holder/bank has first charge over the property. DDA, however, did not execute any conveyance deed in favour of judgment debtor no. 1 and no conveyance deed was sent to decree holder/bank. The flat still stands allotted in the name of judgment debtor no. 1 in records of DDA. It is submitted that flat could not have been sold without the permission of DDA and any transaction of sale between judgment debtor no. 1 and Mr. Kapoor or between Mr. Kapoor and applicant was null and void. The judgment debtor while working with the decree holder/bank had committed various frauds, criminal offences and misappropriated huge amounts of the decree holder/bank. So decree holder/bank dismissed him from the service. Judgment debtor, out of money earned by him through fraud, had purchased various immovable properties and this Court vide order dated 12.1.1994 had restrained judgment debtor from disposing of his properties including the property in question. The Judgment debtor had also applied for conversion of leaseholds rights to freehold rights and got papers issued from DDA on 18.8.1997 for stamping from Collector of Stamps but the same had been returned to the judgment debtor. It is stated that judgment debtor had been dealing with the DDA as an owner and judgment debtor cannot take the stand that he was not the owner and neither the applicant can take the stand that she was the owner. The applicant can not become the owner of the property on the basis of the documents like agreement to sell, GPA, possession letter and receipt.

4. I have heard counsel for the parties. It is admitted case of decree holder that an injunction was granted against the sale of the property in question in 1994. However from documents, it is apparent that judgment debtor had parted with possession of this property in 1993 itself by entering into an agreement to sell, payment receipt showing payment of amount, etc. Mr.C.L. Kapoor to whom possession was transferred by judgment debtor was not a party to the suit and was not aware of the injunction at the time when he further sold the property to applicant. It seems that the present applicant purchased the property without being aware of the judgment debtor's involvement in the fraud with the bank or that the property was the subject matter of an application under Order 39 Rule 1 and 2 CPC. The fact that applicant has been residing in the property has not been denied. The documents placed by the applicant show that the applicant has been living in the property as an owner.

5. Considering the judgment passed by this Court in 2002 (II) AD (Delhi) 734 Asha M. Jain vs. The Canara Bank and Ors., I consider that this Court has to uphold the objections raised by the applicant and the property being occupied by the applicant as an owner though based on unregistered documents, cannot be sold in execution of the decree.

6. It is a peculiar case where judgment debtor had been working with the bank and had played fraud with the bank. He created immovable properties namely Shop No. 20, 1st Floor, Community Shopping Centre No.6, Pocket-B, Vasant Kunj, New Delhi, LIG Flat No. A2/1A/228, Janak Puri, New Delhi, Flat No.B-723, Anand Dham, Haridwar(U.P) and the flat in question. Apart from the fact that he had about 100 shares in Colgate Palmolive India and a cash amount of Rs.1,07,992/- was recovered in a house search of judgment debtor by police in a criminal case. Looking into the facts, I consider that the judgment debtor has been successfully thwarting efforts of execution of the decree. It is a fit case where a notice should be sent to the judgment debtor under Order 21 Rule 37 CPC to show cause as to why he should not be sent to the civil imprisonment for execution of the decree.

7. Notice be sent to judgment debtor, returnable for 28th March, 2008.

8. The decree holder, in the meantime, shall deposit subsistence allowance for judgment debtor's civil imprisonment for a period of 2 weeks.

SHIV NARAYAN DHINGRA, J.

