

Challani Ginning and Pressing Factory Vs. Kamal

Civil Appeal No. 6525 of 2026 · Supreme Court of India · 2026-04-23 · Sanjay Kumar · K. Vinod Chandran · F2J-C-1167

Full judgment text

Challani Ginning and Pressing Factory Vs. Kamal

[Civil Appeal No. 6525 of 2026]

1. It is not lightly said that a litigant's difficulties commence after he obtains a decree. The suit filed in the year 2013 by the appellant herein, for specific performance was decreed directing refund of an amount of Rs.1,45,00,000/- with 8% interest from the date of filing of suit; the prayer for specific performance having been declined. The refund was not made as directed, and the appellant filed an execution petition wherein the suit property was attached in the year 2017. The objections filed by the Judgment Debtor (JD) and his assignees subsequent to the attachment, obviously to frustrate the recovery, were declined.

2. The appellant was then faced with an objection filed by the mother of the judgment debtor claiming the property to be a joint family property in which she has 1/3rd share along with the judgment debtor and his brother. The respondent herein, the objector, claimed that she came to know of the suit and the execution proceedings only on 06.02.2025 when certain persons came to the property in pursuance to the execution proceedings. Despite the knowledge having been pinned to the year 2025, she asserted that she was always in possession of the property since her sons had moved to Bombay. The Execution Court and the First Appellate Court found the objection to be not maintainable. In second appeal, the High Court reversed the order passed under Order XXI, Rule 97 of the Civil Procedure Code, 1908 against which the present appeal is filed.

3. The facts leading to the execution proceedings have to be noticed briefly. The suit filed in the year 2013 was decreed on 24.07.2017, the judgment in which is produced as Annexure RJ-1, in the rejoinder filed by the appellant. The 1st defendant was the son of the respondent and the 2nd defendant, a Private Limited Company in which the 1st defendant and the present objector were Directors. The plaintiff, the appellant herein, sought for specific performance of the suit property based on an agreement of 2011 wherein part consideration of Rs.1,45,00,000/- was paid by cheque to the account of the 2nd defendant, out of the total sale consideration of Rs.1,51,00,000/-.

The 1st defendant took up a contention that there was no sale intended and the agreement was a security for the loan availed by the 2nd defendant company. It was also contended that the loan was arranged through the brother of the 1st defendant who was close to the partners of the appellant. It was found that the suit property was mortgaged to the IDBI bank, which mortgage was known to the plaintiff, recited in the sale agreement, which enables the plaintiff only to the right of subrogation especially when the loan for which the mortgage was created had not been repaid and the bank had not been made a party to the suit.

The prayer for specific performance was declined but the recovery of the amounts paid was directed from JD-1, the son of the respondent herein. The amounts having not been paid, the decree holder filed an execution petition on 08.08.2017 in which an attachment order was passed on 21.09.2017 which was affixed in a conspicuous part of the suit property, which the objector claimed to have been in her possession for long.

4. The auction having been first carried out, the confirmation of sale was challenged by one Vienna Multiventure who was the assignee from JD-1; the assignment itself being after the attachment. The said assignee also mortgaged the property to the HDFC bank. Both the assignee and the HDFC bank filed separate objections which were declined by the Executing Court, confirmed up to the Hon'ble Supreme Court.

The auction sale though was set aside on an objection by JD-1 after which again a sale proclamation was made and the sale confirmed in favour of the auction purchaser who was also the decree holder, by order dated 04.01.2025. A further objection by JD-1 by way of two writ petitions was dismissed by the High Court imposing a cost of Rs.75,000/-. The earlier attempts to frustrate the recovery of money

by sale of the property having failed, the appellant contends the present objections were taken up by the mother.

5. The High Court in the second appeal framed a question of law as to whether the Executing Court erred in not framing issues and permitting the appellant/objector to lead evidence to prove her case that the auction property is a joint family property. Relying on various decisions of this Court, the impugned order rightly found Rule 97, 98, 99 and 101 of Order XXI having laid down a complete code for resolving all disputes pertaining to execution, on an objection being filed by a third party interested in the suit property, without resorting to a separate suit, as brought about by the amendment to the Civil Procedure Code in the year 1976.

The High Court found that the claim of 1/3rd share in the joint family properties was natural insofar as JD-1 himself having inherited his father's business and the purchase of the subject property having been made, possibly from the nucleus of the joint family business, which had to be proved. It was also found that merely because two other properties owned by the objector and her other son having been transacted individually by them would not disentitle the objector, especially since she is said to have been residing in the said property. The contention raised of the objector having not raised the plea when the attachment was affixed to the property was found to be inconsequential insofar as the present objection having been filed immediately after possession notice was issued and there was a threat of dispossession.

6. We have given thoughtful consideration to the matter especially after looking into the impugned order and the orders it reversed. We are unable to find a substantial question of law having arisen since the impugned order proceeds on mere surmises and conjectures, the facts having dealt with in precision by the Executing Court and the 1st Appellate Court. Admittedly, in the suit filed for specific performance, the 2nd defendant who remained ex parte was the Company in which both JD-1 and the present objector were Directors as evidenced from Annexure RJ-2 filed along with the rejoinder. The specific defense was also that the amounts paid as per the agreement was in fact a loan taken by the 2nd defendant company to further its business.

The objection of the mother specifically contends that after her husband's death in the year 1993, when her children were studying, she had taken care of the business left behind by her husband and along with her sons, had started various subsidiary companies wherein herself and her sons were Directors. The objector cannot hence feign ignorance of the suit, especially when notice was issued to the company who chose not to appear. The defense taken by JD-1, the Director of the company who was impleaded in his personal capacity was also that the amounts paid by the plaintiff was a loan disbursed to the company to secure which the sale agreement was executed.

7. The Executing Court and the Appellate Court have also found that there were two other properties in the same locality. Plot no. 10, belonging to the objector and plot no. 49 belonging to her other son; transacted individually by them despite a claim having been now raised by the objector that the properties acquired by the mother and the brothers were acquired with the nucleus of the joint family business.

The other son had also entered into a similar transaction based on which Special Civil Suit No. 26/2014 had also been decreed in a like manner. It is also pertinent that the attachment in the execution proceedings with respect to the property, which is the subject matter of the present proceedings, being plot no. 11, was affixed in a conspicuous part of the property on 21.09.2017. The objector having asserted that she was all along residing in the said property, cannot feign ignorance of the execution proceedings and delay a proper objection being taken up till dispossession is threatened.

The suit was decreed in 2017, and the execution proceedings are pending for the last nine years, when several objections were raised, all of which stood declined. A further objection by the mother of the original judgment debtor claiming 1/3rd share in the property at this stage, when all along the mother and the sons were carrying on the business together, to further the prospects of which, the loan admittedly was taken, is a deliberate attempt to stall the recovery.

8. We find absolutely no reason to sustain the impugned order. The facts are clear and the objection was declined on a proper consideration of the same. The opportunity to lead evidence and prove the claim of co-ownership of the subject property has been proffered merely on a possibility of the claim being sustainable, especially when there was nothing produced to prima facie substantiate such a claim and the obvious facts being clearly against such a claim. On the above reasoning, we set aside

the impugned order and restore the order of the Executing Court affirmed by the 1st Appellate Court, rejecting the objection. The property, if not handed over as yet shall be expeditiously vacated and handed over to the appellant by the Executing Court. The appeal stands allowed.

9. Pending application(s), if any, shall stand disposed of.

.....J. (Sanjay Kumar)

.....J. (K. Vinod Chandran)

New Delhi;

April 23, 2026.

Source disclosure: Complete sanitized public judgment text retained for research; official-primary replacement remains pending.

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