

**Laxmi Devi Vs. Tej Ram and anr.**

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**Court :** Delhi

**Decided On :** Mar-13-1991

**Reported in :** 1991CriLJ1931; 44(1991)DLT468; 1991RLR269

**Judge :** P.N. Nag, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

**Appeal No. :** Civil Miscellaneous (Main) Appeal No. 270 of 1989

**Appellant :** Laxmi Devi

**Respondent :** Tej Ram and anr.

**Advocate for Pet/Ap. :** P.N. Lekhi,; Subhash Mittal,; Ramesh Vatsa,;

**Judgement :**

**P.N. Nag, J.**

(1) This order will dispose of three C.M.(M) Nos. 270 to 272 of 1989 as the impugned order in all the three petitions is common.

(2) In this petition under Article 227 of the Constitution of India the petitioner seeks quashing of the order dated 6th May, 1989 whereby on the basis of the findings given by the trial Court on the application filed by respondent No. I under Section 340 of the Code of Criminal Procedure, the learned trial Court has set aside the

judgment and decree delivered in. Suit No. 34/86. )

(3) In Suit No. 34/86 a degree was passed on 1st April, 1986 by Shri P R Thakur, Additional District Judge, Delhi whereby a decree for declaration was passed in favor of the plaintiff and against the defendants to the effect that Khasra No. 227 I/I 342/624 in village Chandrawali alias Shahdara Delhi be read as Khasra No. 2941/122 which actually corresponds to municipal No. 573 G.T. Road, Shahdara, Delhi-110032 in the sale deed registered at document No. 57 in Addl. Book No. I Vol. 1794 at pages 121 to 124 registered on 13.1.1984 in the office of the Sub Registrar, Krishna Nagar Delhi which shall be deemed to have been incorporated in the aforesaid sale deed

(4) It appears that an application under Section 340 of the Code of Criminal Procedure was moved by the first respondent for initiating criminal proceedings against the petitioner, Smt. Laxmi Devi, and respondent No 2 the transferor. At this stage it may be noticed that in the application filed before the Additional District Judge, a prayer was made only to the extent of initiating criminal proceedings and no prayer for setting aside the decree dated 6th February, 1986 was made, as referred to by the learned Additional District Judge, which is factually not correct.

(5) After holding an enquiry into this matter, the learned Additional District Judge has held that respondent No. 2, Lakhmi Chand Jain was not the owner of the land in question and he wrongly admitted the 'claim of the plaintiff and consequently he held that the decrees dated 1.4.1986 obtained by the respondents, Laxmi Devi, Ram Kaur and Partap Singh on the basis of wrong admission of respondent No. 2 was a nullity and, thus, set aside the decree. However, he disposed of the application without passing any order whether or not a complaint should be filed for prosecution.

(6) After hearing the parties I am of the firm opinion that the learned Additional District Judge by having paused the impugned order dated 6.5.1989 setting aside the decree of the Court on the basis of a finding given in an enquiry ' held in an application under Section 340 of the Code of Criminal Procedure, has acted without jurisdiction as the decree passed earlier by his predecessor could not be set aside in the proceedings under Section 340 of the Code of Criminal Procedure.

There is a specific and elaborate procedure provided in the Code of Civil Procedure for setting aside a decree of the Court in case a party is aggrieved there against and the District Judge has no power or jurisdiction to set aside the decree merely on the basis of the finding given by him in an application under Section 340 of the Code of Criminal Procedure. thereforee,theimpugnedordersettingasidethe decree, dated 6.5.1989 is set aside, the same being without jurisdiction. However, if any party is aggrieved against the decree passed by Shri P.R. Thakur dated 1.4.1986, they would be at liberty to pursue the remedy in appropriate forum and this order shall not affect any contentions available to the parties in any proceedings which they may seek. In the circumstances, there shall be no order as to costs.

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