

Deepak Kumar Sinha Vs. Binay Kumar Sinha and Ors

Deepak Kumar Sinha Vs. Binay Kumar Sinha and Ors

SooperKanoon Citation : sooperkanoon.com/111178

Court : Jharkhand

Decided On : Oct-09-2017

Appellant : Deepak Kumar Sinha

Respondent : Binay Kumar Sinha and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No.4784 of 2017
Deepak Kumar Sinha, son of Kailash Pati Prasad Lal, Resident of - Rahmat Colony East, Doranda, P.O. and P.S. Doranda, District Ranchi Defendant No.2/judgmentdebtor/ Petitioner Versus

1. Binay Kumar Sinha,
2. Sanjay Kumar Sinha,
3. Bipin Kumar Sinha,
4. Bijay Kumar Sinha,
5. Geeta Devi,
6. Sarita Devi
7. Anita Devi All sons and daughters of Kamta Prasad; resident of - Argora, Bali Bageecha, P.O. and P.S. Argora, District Ranchi Plaintiff/ Decree Holder/Respondent

8. Smt. Saroj Devi wife of Late Binoy Kumar Sinha
9. Sajal Kumar, son of Binoy Kumar Sinha
10. Komal Kumari, daughter of Binoy Kumar Sinha
11. Nigam Kumar Verma son of Kailash Pati Prasad Lal
12. Rajesh Kumar Sinha son of Kailash Pati Prasad Lal
13. Asha Sinha, wife of Prabhat Kumar Sinha daughter of Kailash Pati Prasad Lal
Sl No.8 to 13 all sons/ daughters/ grandsons/ granddaughters of Kailash Pati Prasad Lal; All residents of Rahmat Colony, East Doranda, P.O. and P.S. Doranda, District Ranchi
14. Pradip Kumar son of Chandeshwar Prasad
15. Anjali Kumari, daughter of Chandeshwar Prasad
16. Archana Kumari, daughter of Chandeshwar Prasad
17. Sujeet Kumar, son of Chandeshwar Prasad
18. Neeraj Kumar, son of Chandeshwar Prasad Sl. No.13 to 17 all grandsons/ granddaughters of Kailash Pati Prasad Lal; all resident of Kumhar Toli, Doranda, P.O. and P.S. Doranda, District Ranchi Performa Defendant/ Performa Respondents CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
For the Petitioner : Mr. Shashank Shekhar, Adv. For the Respondents : Oral order 06/09.10.2017 Aggrieved of order dated 06.05.2017 in Execution Case No.08 of 1997, whereby objection filed by the judgmentdebtor/petitioner under Order XXI Rule 23(2) of C.P.C. has been rejected, the petitioner has approached this Court.

2

2. Briefly stated, Title Suit No.152 of 1990 was instituted by Kamta Prasad and his wife Radha Devi. In the suit, Kailash Pati Prasad Lal and his son Dipak Kumar Sinha (present petitioner) were arrayed as defendant nos.1 &

2. The suit was instituted for a decree of specific performance of agreements dated 24.08.1981, 01.04.1989 and 21.09.1990. A decree of perpetual injunction against the defendants restraining them from disturbing their possession was also sought by the plaintiffs. The suit was dismissed on contest vide judgment and order dated 19.04.1993 and the decree was sealed and signed on 29.04.1993, against which the plaintiffs preferred Title Appeal No.68 of 1993. This appeal was allowed on 06.12.1996 and consequently, Title Suit No.152 of 1990 stood decreed in respect to agreement to sale dated 01.04.1989 and 21.09.1990. This order was taken in appeal being Second Appeal No.11 of 1997(R). The following substantial questions of law were formulated by the court; (1) Whether on the prayers being made in suit of the plaintiffs, there was any scope of the 1st Appellate Court to pass a decree for specific performance of the agreement dated 1.4.1989 as there were subsequent events?

(2) Whether even if taking for granted that Ext.3 dated 21.9.1990 was arrived at, when there was no subsisting interest of the defendant no.1 over the suit property then also whether the plaintiff can get equitable relief on Ext.8 on the existence of Ext.3 dated 21.9.1990?

3. Finally, by an order dated 17.09.2004, the second appeal 3 stood dismissed on contest with cost. Special Leave Petition bearing S.L.P.(C) No.1374 of 2005, which was preferred by the legal heirs of defendant no.1 against the final order in second appeal, was dismissed on 31.01.2005. The plaintiffs instituted Execution Case No.8 of 1997, in which the defendants/ judgmentdebtors filed their objection under section 47 C.P.C., raising several objections including, that execution in respect of 4 katha 4 dhurs land would be beyond the decree passed in Title Appeal No.68 of 1993. Accordingly, Misc. Case No.01 of 2005 was instituted, which, however, was dismissed on 10.05.2007. Against this order passed in Misc. Case No.01 of 2005, the petitioner came to this Court in W.P.(C) No.4663 of 2007, however, without success. The writ petition was dismissed by an order dated 17.09.2010 mainly on the ground that the second application under section 47 C.P.C. was barred by constructive resjudicata. It is pertinent to mention that during the pendency of second appeal, the judgmentdebtors had filed objection under section 47 C.P.C. which was rejected on 08.06.2004. In the execution case, after a

notice was issued to the judgment debtors, the petitioner filed objection under Order XXI Rule 23(2) C.P.C. on 01.08.2007. Five years thereafter, he filed a supplementary affidavit to objection dated 01.08.2007 raising additional objections to the execution. By an order dated 06.05.2017, petitioner's objections have been rejected. This is the order against which the petitioner has approached this Court.

4

4. The learned counsel for the petitioner referring to the decree drawn in Title Appeal No.68 of 1993 submits that the suit was decreed only in respect of agreement dated 01.04.1989, area of land comprised therein is only 4 decimals of land, however, the plaintiffs have instituted Execution Case No.08 of 1997 for execution of 4 katha 4 dhur land, which is beyond the decree prepared in Title Appeal No.68 of 1993. To fortify his contention, the learned counsel for the petitioner refers to the order passed in second appeal, whereunder while discussing the first substantial question of law this Court has observed: "10.....Thus, this document as a subsequent event does not affect the Ext.8, for this, the document is not a valid agreement for the reason given by the learned trial court....". The document referred therein is the agreement dated 21.09.1990. In essence, contention raised on behalf of the petitioner is that a decree is sacrosanct and it is only the decree which can be executed by the executing court and nothing beyond the decree can be given effect to. The learned counsel for the petitioner has relied on a decision in *Brakewel Automotive Components (India) Private Limited Vs. P.R. Selvam Alagappan* reported in (2017) 5 SCC 37.

5. In *Brakewel Automotive Components (India) Private Limited*, in paragraph no.20 the Supreme Court has observed that the executing court can neither travel behind the decree nor sit in appeal over the same or pass any order jeopardising the rights of the parties thereunder. It has, however, been pointed out that objection 5 to the execution be taken only in cases where the court lacks inherent jurisdiction, or the decree is a nullity, or which can not be executed. In paragraph no.21, the Court has observed that a decree of the court of law being sacrosanct in nature, the execution thereof ought not to be thwarted on mere asking and on untenable and purported grounds having no bearing on the validity or the executability of the decree. During the course of argument, the learned counsel for

the petitioner has also placed reliance on observation in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman & Ors. reported in (1970) 1 SCC 670, wherein it has been held that the executing court must execute the decree according to its 'tenor'.

6. A careful reading of these judgments makes it apparent that objection to execution of a decree should not be entertained on mere asking, for that would be thwarting execution on such grounds which may not have any bearing on the validity or executability of the decree. Referring to the facts in the present case, the observation in these cases becomes relevant for deciding the present controversy. Order passed in Title Appeal No.68 of 1993 would unerringly disclose (paragraph no.16) that the appellate court found the agreement to sale dated 01.04.1989 and 21.09.1990 valid. The appellate court has recorded ;
.....Therefore, I come to a finding that the plaintiffs are entitled to specific performance of contract on the basis of document executed by the defendant no.1 on 01.04.1989 and also 21.09.1990..... No doubt, the decree prepared in Title Appeal 6 No.68 of 1993 merely refers to agreement dated 01.04.1989, however, once the prayer in Execution Case No.8 of 1997 is viewed in the context of the suit schedule property in Title Suit No.152 of 1990 and the judgment of the appellate court read in whole, in particular, paragraph no.16 wherein the plaintiffs have been found entitled for specific performance of contract on the basis of the agreement to sale dated 01.04.1989 and 21.09.1990, it becomes apparent that the plea raised by the petitioner is founded on minor technicality. Second appeal preferred by the defendants stood dismissed and the Special Leave Petition preferred against the said order was also dismissed. Section 47 C.P.C. provides that all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree. In application under section 47 C.P.C. dated 28.03.2005, the petitioner had raised similar objections which have been sought to be raised by him once again in objection under Order XXI Rule 23 C.P.C. By an order dated 10.05.2007, as noticed above, Misc. Case No.01 of 2005 was dismissed and this order has attained finality after dismissal of W.P.(C) No.4663 of 2007.

7. The contention that the proceeding under section 47 C.P.C. and the objection preferred by the judgmentdebtor under Order XXI Rule 23(2) C.P.C. are separate proceedings, may be true to a limited extent, however, the issue which

has been specifically 7 raised in application under section 47 C.P.C. cannot be permitted to be raised once again in the garb of an objection under Rule 23(2) to Order XXI C.P.C. Objection to execution for 4 katha 4 dhur land was specifically raised by the petitioner under section 47 C.P.C. and the issue stands concluded when the writ petition was dismissed. 8. In the above facts, finding no infirmity in the impugned order dated 06.05.2017, the writ petition stands dismissed. I.A. No.7932 of 2017 is also dismissed. (Shree Chandrashekhar, J.) Pankaj

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com