

Faiz Mohammad Vs. Smt. Ram Bai Gupta (D) Through Lr's Pradeep Kumar Gupta Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

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Court : Madhya Pradesh

Decided On : Jan-24-2014

Appellant : Faiz Mohammad

Respondent : Smt. Ram Bai Gupta (D) Through Lr's Pradeep Kumar Gupta Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

Advocate for Def. : Shri. Shailendra Verma

Advocate for Pet/Ap. : Shri. Sanjay Seth

Judgement :

1 Civil Revision No. 245/2013 24/1/2014 Shri Sanjay Seth, learned counsel for the petitioner.

Shri Shailendra Verma, learned counsel for respondent.

With consent of learned counsel for parties, the matter is heard finally.

This Civil Revision is directed against the order dated 30.4.2013 passed by the Executing Court; whereby, an application under Section 151 Code of Civil Procedure, 1908, filed by the petitioner/judgment Debtor. Though by said order the executing Court also decided an application under Section 135, Evidence Act; however, the present Revision is only directed against the dismissal of application

under Section 151 CPC.

That, a suit was filed by the petitioner for permanent injunction restraining the landlord Nanhelal Gupta (since deceased) from suit premises. A counter claim was filed therein by the landlord for decree of eviction under Section 12 (1) (a), (e) and (o) of the Madhya Pradesh Accommodation Control Act, 1961. Trial Court granted decree of eviction under 12 (1) (a), (e) and (o). However, in appeal (Civil Appeal No. 323 A/2010) the decree was modified and was confined to under Section 12 (1) (e) of 1961 Act.

Pertinent it is to note that during the pendency of the civil suit sole defendant, Nanhelal Gupta died and was substituted by his wife and son. No objection seems to have been raised by the petitioner/plaintiff that the daughters are not impleaded and that the counter claim is liable to be dismissed for misjoinder. Be that as it may.

It was at the stage of execution of decree as 2 modified by the appellate court, an application under Section 151 CPC was filed seeking dismissal of the execution on two counts; viz., that, counter claim stood abated as all the legal heirs of the sole defendants were not impleaded and that the execution application is not in consonance with the decree.

The executing Court while declining to go behind the decree rejected the application holding the arrears of rent from December 2003 to October 2011 (23 months) has rightly been claimed as per the decree by the trial court which was in the following terms "izfrnkok izLrqfr fnukad ls fjDr vkf/kiR; lkSaius rd dk 180@& :i;s; izfrekg dh nj ls fdjk;k vnk djs]." being not interfered with by the appellate court.

As to the objection regarding that, the daughters of the sole defendant were not brought on record, the trial court declined to interfere. Section 47 stipulates: "47. Questions to be determined by the Court executing decree. (1) All question arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional courtfees.

3 (3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.

For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit." As observed above it is not shown by the petitioner/plaintiff that any objection as to misjoinder was raised before the trial court or in the appeal. And a question, which even does not arise in the instant case, between the legal heirs without in the least affecting rights and liabilities of the judgment debtor, in the considered opinion of this Court, cannot be dwelt upon under Section 47, CPC.

That, being a landlord tenant suit what is required to be proved is the landlord tenant relationship and not a title or ownership of the suit premises. And the surviving heirs who were brought on record having proved landlord tenant relationship, trial court rightly declined to go behind the decree.

In view whereof there being no jurisdictional error, no interference is caused.

Consequently, Civil revision fails and is dismissed.

No costs.

(SANJAY YADAV) JUDGE Vivek Tripathi

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