

Achaibar Singh Vs. Ram Murat

Achaibar Singh Vs. Ram Murat

SooperKanoon Citation : sooperkanoon.com/456684

Court : Allahabad

Decided On : Mar-25-1972

Reported in : AIR1973All261

Judge : T.S. Misra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47; [Specific Relief Act, 1963](#) - Sections 6

Appeal No. : Second Ex. Decree Appeal No. 15 of 1969

Appellant : Achaibar Singh

Respondent : Ram Murat

Advocate for Def. : J.N. Chaudhary, Adv.

Advocate for Pet/Ap. : M.M. Lal, Adv.

Disposition : Appeal dismissed

Judgement :

T.S. Misra, J.

1. This appeal is directed against the order dated 31-7-1969 passed by the 1st Temporary Civil and Sessions Judge, Sultanpur. The facts giving rise to this appeal are in brief as follows. The decree-holder-appellant obtained a decree for

possession of the northern portion of the land bearing No. 275/1. This portion of land was said to be having an area of 4 Biswas and 3 Dhurs. He put this decree under execution. An objection was filed by the judgment-debtor under Section 47 of the Code of Civil Procedure for rejection of the execution petition, on the ground that there is no demarcating boundary between the portion of the land in dispute and the land which is actually in possession of the judgment-debtor in his own rights and the plaintiff was not entitled to obtain possession unless he got the demarcation made through a Commissioner. The executing Court allowed the objection filed by the judgment-debtor holding that the decree in question was vague and ambiguous inasmuch as the land in suit had not been ascertained and demarcated prior to the passing of the decree. He, therefore held that the decree was inexecutable. The decree-holder preferred an appeal from the said order. The appellate Court below dismissed the appeal on the ground that it was incompetent and not maintainable inasmuch as no appeal lay against an order or decree passed on a petition under Section 47 of the Code of Civil Procedure in the execution of a decree which had been passed in a suit filed under Section 6 of the Specific Relief Act. The decree-holder has now come up to this Court in appeal against the said decision.

2. It was urged on behalf of the appellant-decree-holder that the provisions of Sub-section (3) of Section 6 of the Specific Relief Act did not create a bar to the maintainability of the appeal. The learned counsel argued that Sub-section (3) of Section 6 of the said Act would apply to an appeal which was filed from an order or decree passed in any suit instituted under Section 6 of the Specific Relief Act and -would not apply to an appeal from an order passed on a petition under Section 47 of the Code of Civil Procedure and more particularly when such a petition was not treated as a suit. I find no force in this submission.

3. In the case of Zakarali v. Israr Hussain, AIR 1947 Nag 53 a question arose as to whether against an order passed on a petition under Section 47 of the Code of Civil Procedure in connection with the execution of a decree passed in a suit instituted under Section 9 of the Specific Relief Act, an appeal or revision would lie. It was held that Section 9 of the Specific Relief Act expressly prohibited an appeal from an order or decree passed in any suit instituted under that section and

that the order passed under Section 47 of the Code of Civil Procedure was not appealable. Reliance was placed on ILR 45 Cal 519 = (AIR 1918 Cal 925); AIR 1928 Lah 539; (1903) ILR 26 Mad 438; AIR 1923 Lah 105 and ILR 13 Lah 798 = (AIR 1932 Lah 416). In the case of Kanai Lal Ghose v. Jatindra Nath Chandra, ILR 45 Cal 519 = (AIR 1918 Cal 925) it was held that no appeal would lie from an order passed in execution of a decree in a suit under Section 9 of the Specific Relief Act. In the case of Tota Ram v. Shibban Lal, AIR 1932 Lah 416 the main ground urged was that no appeal was competent against the order of the executing court passed on a petition under Section 47 of the Code of Civil Procedure, Relying on the case of Kanai Lal v. Jatindra Nath, ILR 45 Cal 519 = (AIR 1918 Cal 925) (supra) it was held that an application in execution proceedings was included in the term 'suit' under Section 9 of the Specific Relief Act and an appeal to the District Judge from an order of the executing court was incompetent. The case of Kanai Lal Ghose v. Jatindra Nath Chandra (supra) Was followed in the case of Munshi Ram v. Amin Chand, AIR 1928 Lah 539. Similar question also arose in the case of Brij Lal V. Mahadeo : AIR 1954 All 19 . In that case the Civil and Sessions Judge, Lucknow, had held that in view of the prohibition contained in Section 9 of the Specific Relief Act to the effect that no appeal shall lie from an order or decree passed in a suit instituted under that section, the appeal preferred before him from an order under Section 47 of the Code of Civil Procedure was incompetent. The appeal was dismissed. Thereupon a second appeal was filed against the order of the Civil and Sessions Judge and a revision under Section 115 of the Code of Civil Procedure was also filed against the order of the Munsif. While placing reliance on the cases of AIR 1947 Nag 53; Tota Ram v. Shibban Lal, ILR 13 Lah 798 = (AIR 1932 Lah 416) and Kanai Lal Ghose v. Jatindra Nath Chandra, ILR 45 Cal 519 = (AIR 1918 Cal 925) (supra) the view of the Civil and Sessions Judge in regard to the competency of the appeal was upheld.

4. Thus, it is by now well settled that the term 'suit' in Section 6 of the Specific Relief Act would include an objection under Section 47 of the Code of Civil Procedure filed against the execution of the decree passed in such a suit and in view of the bar created by the provisions of Sub-section (3) of Section 6 of the said Act no appeal would lie from an order passed on such an objection filed under Section 47 of the Code of Civil Procedure. The appellate Court below was,

therefore, justified in upholding the preliminary objection and dismissing the appeal.

5. In these circumstances, this Second Appeal is also, therefore, incompetent and is accordingly dismissed with costs.

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