

Smt. Murti Devi and ors. Vs. Vth Additional District Judge and ors.

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Court : Allahabad

Decided On : Feb-06-2009

Reported in : 2009(2)AWC1535

Judge : Sunil Ambwani, J.

Appellant : Smt. Murti Devi and ors.

Respondent : Vth Additional District Judge and ors.

Advocate for Pet/Ap. : Shri. M.K. Gupta, Shri. M. K. Gupta

Disposition : Petition allowed

Judgement :

Sunil Ambwani, J.

1. Heard Shri M.K. Gupta, learned Counsel for the petitioners, Shri Ravi Agrawal appeared on behalf of respondents.

2. This writ petition arises out of an order passed by Civil Judge, Ghaziabad on 20.1.1989 in Misc. Case No. 301 of 1988, Smt. Maya Devi v. Smt. Murti Devi, in which the objections under Section 47 read with Section 151 of Code of Civil Procedure were partly allowed and the decree of ejectment was held not to be executable. By the judgment and order dated 23.11.1990 the Vth Additional District Judge, Ghaziabad, dismissed Civil Revision No. 32 of 1989 under Section

25 of the Provincial Small Causes Court Act read with Section 115 of C.P.C.

3. Brief facts, giving rise to this writ petition are that Smt. Murti Devi filed a J.S.C.C. No. 976 of 1997 against Smt. Maya Devi for eviction. The suit was decreed on 20.1.1978. In Execution Case No. 712 of 1988, Smt. Maya Devi filed objections under Section 47 of the Code of Civil Procedure (Misc. Case No. 48 of 1988) claiming that the decree was a nullity. The objections were rejected by the Civil Judge on 16.10.1988, against which the Revision No. 259 of 1988 was dismissed on 17.10.1981.

4. Smt. Maya Devi the judgment debtor thereafter filed an Original Suit No. 326 of 1981 in the Court of Munsif, Hapur claiming to be the owner of the property and applied for an ad interim injunction. The application for injunction was rejected. In appeal the Additional District Judge, Ghaziabad granted interim injunction on the ground that she is not liable to be ejected from the disputed property till the disposal of the Suit No. 326 of 1981. Later on it was found that the Munsif, Hapur had no jurisdiction to entertain the suit. The plaint was returned for presenting to appropriate Court, on which Maya Devi filed O. S. No. 199 of 1988 in the Court of Civil Judge, Hapur and again applied for injunction. Her application was rejected. She again filed objections under Section 47, C.P.C. read with Section 151 on 21.12.1988 in the execution proceedings of the decree of ejectment.

5. Smt. Maya Devi in her objections as well as supplementary objection under Section 47/151, C.P.C. claimed herself to be the owner of the suit property. The executing court held that she has perfected her rights under Section 14 of the Hindu Succession Act, 1956 and thus until the suit filed by her is decided, she is not liable to be evicted from the premises in dispute.

6. The revisional court, relying upon *Bhawan Watch and Ors. v. Solanki Hanuji Khodaji Mansang and Ors.* : AIR 1972 SC1371 , held that though the executing court cannot go behind the decree under execution, it is the duty of the executing court to find out the true effect of the decree. In appropriate cases it can take into consideration the pleadings as well as the proceedings leading up to the decree. The executing court to consider the circumstances under which the words in the decree are used and that if the court feels in discharge of its duty that the decree

is not executable, it will be deemed to have jurisdiction vested in it to consider the issue.

7. The revisional court thereafter recorded the findings that in the present case Shri Shiv Charan Das had three sons, Prabhu Dayal; Ram Kishan and Prahlad Saran. Shri Shiv Charan Das executed a Will dated 9.3.1985 (paper 73C) by which the property devolved on Shri Prahlad Saran and after death of Prahlad Saran his wife Anguri Devi. Since Prahlad Saran predeceased Anguri Devi. The property automatically devolved upon Smt. Anguri Devi on which Maya Devi as daughter of Anguri Devi became the owner of the property Shri Shiv Charan died in 1960, the wife of Shiv Charan died in March, 1970; Shri Prabhu Dayal died on 14.1.1966; Smt. Anguri Devi died on 20.12.1970 and Prahlad Saran died on 22.7.1970. Prahlad Saran died before Anguri Devi and thus under Section 14 of the Hindu Succession Act, Smt. Maya Devi became absolute owner of the property. In the judgment dated 24.5.1982 in Misc. Case No. 8 of 1987, the Second Additional District Judge had also mentioned about the ownership of the property of Smt. Maya Devi. The decree as such could be executed. The objections, that in S.C.C. Suit No. 976 of 1977 the matter of ownership has also been decided was not accepted. The findings recorded by Judge, Small Causes Court on the title were not to operate as res judicata vide Smt. Ganga Bai v. Smt. Bhabu Bhai : [1982]1SCR1176 . The revision was consequently dismissed.

8. The reasons given in the judgment and decree passed by Judge, Small Causes Court in J.S.C.C. No. 976 of 1971, Smt. Murti Devi and Ors. v. Smt. Maya Devi and Ors. are that the question, whether there was a relationship between the parties as landlord and tenant, was framed as an issue No. 3 and was decided with the findings that on the basis of Will dated 9.3.1993 executed by Shri Shiv Charan Das in favour of Smt. Chandrawati and Prahlad Saran. They became the owners of the disputed shop after Shri Shiv Charan Das. This fact was also proved by the copy of the judgment in O.S. No. 595 of 1962 in which Smt. Chandrawati was held to be the owner of the disputed property. The Judge, Small Causes Court also referred to a judgment of the High Court in Second Appeal No. 851 of 1956 in which it was found that M/s. Saraswati Handloom Factory was not the tenant of the plaintiff Smt. Maya Devi. The findings recorded by Judge, Small

Causes Court on the questions of relationship of landlord and tenant are as follows:

Parties have also adduced oral evidence in the support of their case. Plaintiffs examined Sri Rajendra Prasad as P.W. 1 who is the son of Sri Prahlad Saran. He deposed that the disputed shop was given in the tenancy of Prabhu Dayal at the monthly rent of Rs. 10 and the rent note dated 19.10.1948 was executed by Sri Prabhu Dayal. He also stated that after the death of Sri Shiv Charan Das the disputed shop devolved with the Prahlad Saran and after his death the plaintiffs became the landlord of the disputed shop. Witness has also stated about the Will dated 9.3.1953 executed by Sri Shiv Charan Das in favour of Smt. Chandra Wati and Prahlad last Will executed by Lala Shiv Charan Das. After the death of Srimati Angoori Devi the defendant Smt. Maya Devi inherited the tenancy of the disputed shop and she is in arrears of rent from 19.12.1970. The witness has also proved the notice to quit which was served by the plaintiff on the defendant. The testimony of the witness was tried to assail by the learned Counsel for the defendant that in his presence the rent note dated 19.10.1948 was never written. But the witness could make it clear that from the documents he is possessing this came to his notice that originally Sri Prabhu Dayal occupied the disputed shop in the capacity of the tenant. The witness also denied the suggestions put by the defendant that the rent regarding the shop was never paid to Sri Shiv Charan Das and thereafter to Sri Prahlad Saran. P.W. 2, Sri Hart Singh who happens to be the witness of rent note dated 29.10.1948 and P.W. 3 Sri Ram Gopal is also the witness of the said rent note corroborated the plaint case. I don't find any reason to disbelieve the sworn testimony of these witnesses.

Lastly P.W. 4 Sri Ram Rich Pal was also examined by the plaintiff. His act only proved the rent note paper No. 120GA but at the same time he is also the witness of Will Paper No. 123GA. The witness has proved the Will and it was clarified by him that in the presence of witness the testator made his signatures and thumb impressions over that Will. The witness could thus prove the valid execution of the Will and further there are no suspicious circumstances surrounding the execution of the Will. D.W. 1 Sri Satish Chand has also not challenged the Will paper No. 123GA in his statement on oath. Nor only this sworn testimony of P.W. 1 on the

question of the Will was not challenged by the defendant by putting a single question regarding that Will.

In view of the aforesaid discussion I am of the opinion and hold there existed the relationship of landlord and tenant in between the parties. The issue is decided accordingly.

9. Smt. Maya Devi thereafter filed Original Suit No. 88/1982 in which she did not get any injunction. The plaint was returned on the ground that the suit was filed in the wrong Court. The Civil Judge, Hapur thereafter in Suit No. 199 of 1988 on the same plaint again rejected the injunction application.

10. The issue, whether there was any relationship of landlord and tenant between the parties was considered and decided after taking evidence. It was found that the plaintiff in O. S. No. 976 of 1997 was the landlady. The objections to the execution of the decree were considered and decided by the trial court and thereafter in the suits filed by defendant-judgment debtor the injunction applications were rejected. The principles of res judicata are clearly attracted in the case, in which the decisions taken by the Court of competent jurisdiction between the same parties would be binding on them. The issue could not be reopened and re-agitated again.

11. Shri Ravi Agrawal submits that Smt. Maya Devi had perfected her rights under Section 14 of the Hindu Succession Act and that the decree of ejectment will not be executable by operation of law. He has relied upon the Supreme Court judgments in Haji Sk. Subham v. Madhorao : AIR 1962 SC1230 ; and Vidya Sagar v. Sudesh Kumar : [1976]2SCR193 .

12. In Haji Sk. Subham's case (supra), a Constitution Bench judgment of the Supreme Court, held that the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 had come into force before the decree was passed. The Court decreed the suit in ignorance of the Act. The rights had vested in the estate and thus the decree could not be executed. This case is clearly distinguishable as after vesting of the lands in the State no decree could be passed and thus the decree was null and void and could not be executed.

13. In Vidya Sagar's case (supra), it was held that the decree for preemption of proprietary interest of suit lands in Nainital District was obtained prior to enforcement of U.P. Zamindari Abolition and Land Reforms Act in that district. The rights of parties were taken away by abolition of law. The old property was no longer existing and thus the decree holder had nothing left after vesting of the land in the estate. The decree as such could not be executed.

14. Both these judgments of the Supreme Court are not applicable to the facts in the present case. The submission, that since Prahlad Saran pre-deceased Anguri Devi, she will become absolute owner of the property under Section 14 of the Hindu Succession Act was considered by the Judge, Small Causes Court, in decreeing the suit for eviction. Shri Shiv Charan Das had left a Will bequeathing the property to Prahlad Saran. According to the Will of Shri Shiv Charan Das, who died in 1960 Prabhu Dayal and his wife had a right to live in the property which they were occupying under the Rent Deed dated 19.10.1948 and after their deaths Prahlad Saran husband of Murti Devi was to be the owner. Smt. Chandrawati the widow of Shiv Charan Das died after her in March, 1970; Prahlad Saran died on 20.7.1970; Prabhu Dayal died on 14.1.1966 and Anguri Devi widow of Prabhu Dayal died on 20.12.1970. Smt. Anguri Devi did not have preexisting right or life interest in the property. She was a tenant alongwith her husband and that on the death of Prabhu Dayal and his wife Anguri Devi, the property devolved by Will on Prahlad Saran. The death of Prahlad Saran on 20.7.1970 before the death of Anguri Devi on 20.12.1970 will not take away the right of his widow Smt. Murti Devi to own the property. Shri Prahlad Saran had acquired it by way of Will, only to the condition that he will not become the owner so long both Prabhu Dayal and Anguri Devi are alive. The fact, that Prahlad Saran predeceased Anguri Devi, the widow of Prabhu Dayal would not give any benefit of Section 14 of the Hindu Succession Act to Anguri Devi. She was neither owner of the property nor could have inherited it. She was occupying the property as the tenant and that her tenancy rights could not have fructified into ownership under Section 14 of the Hindu Succession Act.

15. I find substance in the contention of Shri M. K. Gupta, learned Counsel for the petitioner that in this case the principles of constructive res judicata are attracted.

The ejectment decree had become final with the findings that there was relationship of landlord and tenant between the parties and that first set of objections under Section 47 of the execution of the decree were rejected will estop the executing court to consider the issue again on the same facts. The judgment in *P. K. Vijayan v. Kamalakshi Amma and Ors.* : [1994]3SCR213 and *Dr. Ghanshyam Jaiswal v. Kamal Singh* : [1996]2SCR759 , will also have no application to the case. The principles of res judicata not only apply to separate proceedings but also in a subsequent stage in the same proceedings. The same Court namely the executing court, could not have again considered the question of right of ownership, which was decided by it, in the trial of the suit. The principles of res judicata also apply as issue estoppel in the stages in the same proceedings.

16. The writ petition is allowed. The judgments and orders dated-23.11.1990, passed by Vth Additional District Judge, Ghaziabad in Civil Revision No. 32 of 1989, and the judgment and order dated 20.1.1989 passed by the Civil Judge, Ghaziabad in Misc. Case No. 301 of 1988, *Smt. Maya Devi v. Smt. Murti Devi*, are set aside. The executing court will proceed with execution of the ejectment decree and deliver possession of the properties to the decree holder in accordance with law.