

Smt. Sona Devi and ors. Vs. the District Judge, Allahabad and ors.

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Court : Allahabad

Decided On : Nov-12-1987

Reported in : AIR1988All52

Judge : R.P. Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 97, 98 and 99;
Code of Civil Procedure (CPC) (Amendment) Act, 1976

Appeal No. : Civil Misc. Writ Petn. No. 17268 of 1986

Appellant : Smt. Sona Devi and ors.

Respondent : The District Judge, Allahabad and ors.

Advocate for Def. : Ravi Kant, Adv.

Advocate for Pet/Ap. : Keshari Nath Tripathi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.P. Singh, J.

1. This writ petition is directed against the order passed by the District Judge, Allahabad, dated 8-10-1986 upholding the order passed by the Judge, Small

Cause Court, dated 23-9-1986.

2. The facts of this case are that a suit for arrears of rent and ejectment was filed by respondent No. 3 Ram Niwas Gupta against respondents Nos. 4 to 7 before the Judge, Small Cause Court which remained pending for about four years and then the suit was decreed ex parte on 6-8-1986 in favour of the respondent No. 3. Thereafter respondent No. 3 put the decree in execution and moved an application for obtaining possession: therein. Respondent No. 3 also requested for police help which was allowed by the execution court and then proceeded to execute the decree. The petitioner then filed an application under Order 21, Rules 35, 97 and 99, Civil Procedure Code claiming that 'they were in possession in their own right and not as sub-tenants and are not bound by the decree passed in Suit No. 196 of 1982 and hence are not liable for eviction in execution of the decree. Respondent No. 3 filed an objection to the application moved by the petitioners on the ground that the petitioners had no right to file an objection under Order 21, Rule 99 and that they are the sub-tenants liable to be ejected and cannot be heard till they are dispossessed from the immovable property and further that the petitioners have also filed a regular suit No. 739 of 1986 for declaration of their rights and for an injunction against respondent No. 2 on 14-8-1986 in the Court of the Munsif West, Allahabad wherein they have already prayed for issue of the temporary injunction from evicting them in execution of the decree and hence these execution proceedings cannot be stayed and the petitioners have no right to file an objection at this stage.

3. The Judge, Small Cause Court in a very detailed order held that Order 21, Rule 99 provides for an objection by a person other than the judgment-debtor which can be filed only after he is dispossessed from the premises which constitutes the subject-matter of the decree and the executing court has no jurisdiction to start an inquiry at the instance of a third party other than the decree-holder/ auction purchaser under Order 21, Rule 97, C.P.C. It further held that an inquiry at the instance of a third party in possession is contemplated only under Order 21, Rule 100, C.P.C. after he was dispossessed and not before it and on this ground dismissed the objection filed by the petitioners, vide his order, dated 23-9-1986. Feeling aggrieved, the petitioners went up in revision before the District Judge who

also dismissed the revision and hence this writ petition is filed before this Court.

4. The contention of the learned counsel for the petitioners is that the objection filed by the petitioners under Order 21, Rules 35, 97 and 99, C.P.C. was maintainable and the petitioners had a right to get, their title determined in these proceedings and the learned Judge, Small Cause Court, respondent No. 2, committed a manifest error in holding that the objection of the petitioners was not maintainable at this stage till they were dispossessed of the immovable property by the holder of the decree. On the other hand, the learned counsel for the respondent strenuously urged that the petitioners being the persons other than the judgment-debtor, their objection under Order 21, Rule 99 was not maintainable till they were already dispossessed and their rights could be determined only after they are dispossessed of the immovable property by the decree-holder, respondent No. 3. Hence the scope of Order 21, Rules 97 and 99, C.P.C. has to be examined in the present case.

5. The learned counsel for the petitioners in support of his contention placed reliance on AIR 1969 All 440, Ram Swarup v. Mahabir Prasad where it was held that 'a plain reading of Order 21, Rules 97 and 99, CPC shows that all that is required for their application is an application by the holder of a decree complaining of resistance or obstruction in obtaining possession by a person. Hence when such an application has been made, the court has no option but to proceed in accordance with the procedure laid down in Rule 97(2).' It is significant to note that this case was decided in the year 1969 when Order 21, Rule 99, CPC read as follows : --

'Where the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court shall make an order dismissing the application.'

This provision was amended in 1976 and the present Order 21, Rule 99 reads as follows :---

'99. Dispossession by decree-holder or purchaser.-- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.'

6. Hence it will be clear that the law, as it stands now, an objection under Order 21, Rule 99, CPC is maintainable by the person other than the judgment-debtor complaining of his dispossession only after he is dispossessed of the immovable property.

7. The learned counsel for the respondent relied on a later case reported in (1983) 9 All LR 231 : (AIR 1983 All 256) Krishna Kumar Kanaujia v. Smt. Ramkesh Gupta, where it was laid down that Rule 99 of Order 21, CPC clearly contemplates that an objection by a person other than the judgment-debtor can only be filed after his dispossession from the premises which constitutes the subject-matter of the decree and reliance was placed on a Full Bench decision of the Madhya Pradesh High Court, reported in AIR 1980 Madh Pra 146, Smt. Usha Jain v. Manmohan Bajaj where it was held that an enquiry at the instance of a third party in possession is contemplated only under Order 21, Rule 100 after he was dispossessed and not before it. The executing court has no jurisdiction to start an enquiry suo motu or at the instance of a third party other than the decree-holder/ auction purchaser under Order 21, Rule 99. This rule is merely permissive and not mandatory and the executing court is not bound to stay its hands, the moment a third party filed an objection to the execution nor the stay would : continue till an unwilling decree-holder/ auction purchaser is forced to apply for investigation into the right or title claimed by the third party and negative the claim therein. If the executing court were to stay its hand still investigation into a third party's claim is not finally decided then it would result in depriving the decree-holder of his possession by filing repeated spurious claims. It was further held that the omission of the executing court to investigate into the objection filed by a third party does

not result in injustice to the third party. It cannot be said that he would have no remedy to protect his possession and have his right judicially investigated prior to his dispossession, his only remedy then being under Order 21, Rule 100 after dispossession. Another remedy available to such a third party is to institute an independent civil suit for declaration of his title claiming therein the relief of temporary injunction to protect his possession.

8. In AIR 1983 Madh Pra 44, Mohd. Shareef v. Bashir Ahmad, the same view was laid down that a third party has no locus standi to seek investigation into its claim under Order 21, Rule 97; such a third party can protect his possession during execution of the decree only by an independent civil suit claiming temporary injunction therein on the basis of strong prima facie case showing its right to possession independent of the judgment-debtor.

9. In AIR 1985 Ker 204, K. A. Prabhakaran v. Kuttian Prakashan, it was held that a plain reading of Order 21, Rules 98, 99, 100 and 103 makes it clear that no application for adjudication of the right, title and interest of an objector would lie before he is dispossessed in execution of a decree to which he is not a party. If, however, he is dispossessed, he is given a remedy under Order 21, Rule 99 to apply for restoration of possession to the execution court. The execution court on such application is required to adjudicate the question of right, title and interest of the dispossessed objector and pass appropriate orders under Rule 100. No application under Order 21, Rule 97 would lie at the instance of an objector in anticipation of his dispossession in execution of a decree for eviction to which he was not a party.

10. Another case which was relied upon by both the parties is reported in AIR 1962 Andh Pra 72, Motamari Ramaiah v. Km.Malliah. This case also is not of much help to the petitioners as in paragraph '15' it was laid down :

'The result of the foregoing discussion may be summarised thus : Under Order 21, Rule 97, CPC only the decree-holder can file an application to the court complaining of resistance or obstruction which can result in an investigation by the Court and suitable orders. An obstructor, who is not a party to the decree under execution cannot approach the Court with an application to determine and

safeguard his rights or to obtain an order in his favour under Order 21, Rule 97, CPC or any other provision of law. If a third party files such an application, impleading the decree-holder it would be open to the decree-holder to contend that such an application does not lie, that the third party cannot ask for an enquiry in the matter or relief and to ask for an order in favour of himself (decree-holder). If he so contends, the application would have to be dismissed'

11. In view of the decisions of various High Courts noted above, it appears that the objection filed by the third party i.e., the petitioners in the present case was rightly held by the court below as not maintainable till they have been dispossessed from the premises which constitutes the subject-matter of the decree and it has been held that if the executing court were to stay its hands till investigation into third party's claim is not finally decided then it would result in depriving the decree-holder of his possession by filing repeated spurious claim. In the present case, we find that a regular suit No. 739 of 1986 was already filed by the petitioners for a declaration of their right and moved an injunction application against respondent No. 3 in the court of Munsif West, Allahabad wherein they prayed for a temporary injunction from evicting them in execution of the decree. Hence it is only after a very strong prima facie case is made out, that the petitioners may obtain an injunction, and that the petitioners are already pursuing their remedy before the civil court. Hence also, no interference is called for with the impugned orders in this extraordinary jurisdiction under Article 226 of the Constitution.

12. In the result, I find no merit in this writ petition which is accordingly dismissed. In the circumstances of the case, parties shall bear their own costs. The stay order, dated 15-10-1986 is vacated.

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