

Rahmatullah Vs. Indra Kumar and ors.

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Court : Allahabad

Decided On : Feb-05-2002

Reported in : 2002(2)AWC1142

Judge : B.K. Rathi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 and 146 - Order 21, Rule 16 - Order 22, Rules 3, 4 and 8; [Evidence Act, 1872](#) - Sections 68 and 69; [Indian Succession Act, 1925](#) - Sections 57 and 213

Appeal No. : Civil Revision No. 36 of 2002

Appellant : Rahmatullah

Respondent : indra Kumar and ors.

Advocate for Pet/Ap. : Triloki Nath, Adv.

Disposition : Revision dismissed

Judgement :

B.K. Rathi, J.

1. This revision has been preferred under Section 115, C.P.C. against the order dated 17.1.2002 passed by Additional District Judge, Pilibhit.

2. The facts giving rise to this revision in brief are as follows :

'Seth Tharumal filed S.C.C. Suit No. 3 of 1981 against the revisionist for eviction and for recovery of arrears of rent. The suit was decreed on 22.11.1984. Against that decree, the present revisionist filed a revision in this Court and it is alleged that the same is still pending. In that revision, a conditional stay was granted staying the eviction of the revisionist from the premises in suit subject to the regular payment of rent. The revisionist deposited the rent till the year, 1988. Seth Tharumal who was the plaintiff also died in the year, 1988.'

3. The present opposite parties applied for execution of the decree in the year 1992 alleging that they have succeeded the property of Seth Tharumal by registered Will dated 21.7.1985. The revisionist filed objections in the execution under Section 47, C.P.C. The said objections have been rejected by the impugned order by the learned Additional District Judge. Aggrieved by It, the present revision has been preferred.

4. I have heard Sri Triloki Nath, learned counsel for the revisionist.

5. The first argument of the learned counsel for the revisionist is that the decree holder has been defined in Clause (3) of Section 2, C.P.C. as the person in whose favour the decree has been passed ; that Order XXI, Rule 10, C.P.C. provides for application for execution. It provides that application for execution can be moved by the holder of the decree. It is contended that the opposite parties are not holder of the decree. They have not got their names substituted and, therefore, they have no right to apply for the execution of the decree.

6. On the basis of the above provisions, the argument of the learned counsel appears to be very attractive, but it is also very fallacious and is repelled by the same force. Learned counsel has totally ignored the provisions of Section 146, C.P.C. which provides that where any proceeding may be taken or application may be made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. In this connection, the Explanation of Rule 16, Order XXI is also material. It provides that a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree. The opposite parties are claiming the property from decree holder Seth Tharumal

and they have, therefore, right to apply for the execution.

7. The next argument of the learned counsel is that the application for execution is barred by time. It has been argued that the opposite parties could have got their names substituted within three years. This argument of the learned counsel is not correct. There was no question of substitution of names of the opposite parties. The provisions of Order XXII, Rules 3, 4 and 8, C.P.C. does not apply to the execution. The period prescribed for the execution of the decree is 12 years. Therefore, the execution filed in the year 1992 is within time.

8. The next argument of the learned counsel for the revisionist is that the opposite parties are claiming the property by way of Will dated 21.7.1985 ; that the said Will has not been proved in accordance with the provisions of Sections 68 and 69 of the Evidence Act. Learned counsel has referred to the statement of Bhagwat Kumar, opposite party, who was examined in the trial court. His statement is Annexure-2 to the affidavit. Learned counsel has taken me through the statement and has argued that the Will has not been proved in accordance with the provision of Sections 68 and 69 of the Evidence Act and. therefore, this Will cannot be relied upon. This argument of the learned counsel is also misleading. The Will cannot be disputed by the applicant who is judgment-debtor, Therefore, the opposite parties were not required to prove the title to the property by Will. The title to the property is not to be decided in this case. No body else has applied for the execution of the decree. The opposite parties are sons of the predeceased son of Seth Tharumal and claimed the property on the basis of the Will. The trial court has observed that in other cases, they have been substituted on the basis of this Will in place of Seth Tharumal.

9. The proof of the Will in this proceeding was not required as there was no dispute regarding the ownership and succession of the property left by Seth Tharumal. This objection is not open to the revisionist.

10. Lastly, it has also been argued by the learned counsel for the revisionist that the execution is not maintainable as probate or letter of administration of the Will has not been taken as required by Section 213 of the Indian Succession Act. However, this provision also does not apply in view of Section 57 of the Indian

Succession Act. I have perused the order passed by the Additional District Judge. It is very exhaustive, detailed and well considered order and the entire provisions of law and the Indian Succession Act have been considered. I am in full agreement with the reasoning given by the Additional District Judge.

11. In the circumstances, the revision is without merit and is hereby dismissed.

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