

Rajendra Kumar Vs. 3rd Additional District Judge, Moradabad and ors.

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Court : Allahabad

Decided On : Aug-02-1988

Reported in : AIR1989All162

Judge : B.L. Yadav, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 97 and 97(1)

Appeal No. : Civil Misc. Writ Petn. No. 15093 of 1988

Appellant : Rajendra Kumar

Respondent : 3rd Additional District Judge, Moradabad and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : S.N. Agarwal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.L. Yadav, J.

1. By this petition under Article 226 of the Constitution of India the orders D/-16-5-88 passed by the III Additional District Judge, Moradabad and the order D/- 13-8-87 passed by the Munsif, Chandausi, Moradabad, on the application under 6. 21,

Rule 97, C.P.C. (for short the Code) filed by the decree-holder, respondent 3 in a suit for ejectment from the accommodation in dispute are sought to be quashed.

2. The petitioner is son of the Sheo Shankar, who was a party to the suit No. 241/66 filed by respondent No. 3 for the ejectment of Sheo Shankar and one more person. That suit was decreed on the basis of a compromise (43-Ka). To execute that decree an application was filed by respondent 3 (Execution Case No. 200/72). In that application prayer was that the ejectment of judgment-debtor may be effected and the amount in the decree may be paid to decree-holder. Parwana Dakhal was issued. On that the Amin made a report that without the assistance of police no effective execution can be carried out on the spot by ejectment of the judgment-debtor. On 25-3-82 the execution application was dismissed. Appeal against that order also failed. Thereafter matter was taken to the High Court and the High Court allowed the appeal and quashed the orders of the learned Munsif as well as the order passed by the appellate Court and the executing Court was directed to proceed with the execution of the decree. It was also directed by this Court that the allotment order in favour of Rajendra Kumar, the present petitioner has to be ignored and immediate possession may be delivered to the decree-holder. Against that order of the High Court the petitioner preferred a leave petition before the Supreme Court. But the same was also dismissed. Thereafter the matter was taken up by the trial Court on the application of the decree-holder under Order 21, Rule 97 of the Code. The petitioner, who was the son of Sheo Shankar, who was a party to the earlier suit for ejectment, filed an objection that he has got an allotment order and he was in possession and the decree need not be executed. That objection has been overruled on the basis of the judgment of this Court and the Supreme Court.

3. Learned counsel for the petitioner urged that objection of petitioner under Order 21, Rule 97 was maintainable. He placed reliance on Bhagwat Narayan Dwivedi v. Kasturi, AIR 1974 Madh Pra 26. But in that case it was resisted by the third party and not by the son of the judgment-debtor, and in that case the High Court has not earlier decided the matter in favour of the objector. In the present case in earlier proceedings before this Court it was directed that the execution application may be decided ignoring the allotment order in favour of the petitioner. Hence the case

aforesaid is not applicable to the facts of the present case.

4. In order to appreciate this point the provisions of Order 21, Rule 97 are set out below : --

'97. Resistance or obstruction to possession of immovable property.-- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.'

5. A bare reading of the aforesaid provision would indicate that it is only the decree-holder or the auction-purchaser of any such property who can make an application in case its possession is resisted or obstructed. In the present case petitioner was the son of judgment-debtor, who was sought to be ejected on the spot from the accommodation in dispute. He has certainly obtained the allotment order, but that order was directed by this Court, as indicated above, to be ignored as if it was totally non est. Against that order of this Court the petitioner went to Supreme Court and there he was not successful. In this view of the matter the petitioner neither being a decree-holder nor auction-purchaser, has no right to make any objection or application. No doubt he was himself responsible to create obstruction. Hence the application or objection filed by the petitioner was not maintainable under Order 21, Rule 97. Such application could be maintainable not at the behest of the son of the judgment-debtor or the person obtaining allotment order. Hence the application was correctly rejected.

6. The matter can be viewed from another angle. Whatever the petitioner contended was that he has got a valid title on the basis of the allotment order obtained during the pendency of the case or the execution proceeding. But that allotment order was held to be non est by this Court and the petitioners Special Leave Petition before the Supreme Court also failed. Hence whatever objection

the petitioner could raise has already been considered by this Court and the Supreme Court had nothing remains to be considered in the proceedings where execution was sought to be effected and the same was obstructed by the petitioner. I am of the view that in order to appreciate the correct import of Order 21, Rule 97, Rules 98, 99, 100, 101 and 102 may be read together. After a bare reading of these provisions, it is evident that in case somebody else other than the judgment-debtor is dispossessed, he may make an application under Rule 99 (ninety nine) and the same can be decided under Rule 101 by the execution Court and not by a separate suit. Rule 100 provides that upon the determination of question referred to in Rule 101, the Court shall make an order allowing the application and directing that the applicant be put into the possession of the property, or he can dismiss the application. To the same effect are the provisions under Rule 98. They are to the effect that in case adjudication has been made under Rule 101, the Court shall make an order allowing the application and in case the decree-holder or the auction purchaser has been dispossessed or his possession was interfered with, in that event he shall be put into possession. The rights of the petitioner were already decided earlier by this Court when it was directed that the allotment order in favour of the petitioner may be ignored, meaning thereby that the right of petitioner has to be ignored as the allotment order was only basis of the title of petitioner who was son of the judgment-debtor. Hence he has not got even semblance of right or title which could be adjudicated upon by the execution court under Rule 101. In this view of the matter, the application of the petitioner was correctly rejected.

7. The next point was that the petitioner must have been heard. Reliance was placed on *Ajit Kumar Ray v. Jnanendra Nath Dey*, AIR 1975 Cal 433. In that case resistance or obstruction to the delivery of possession was made by the third party and the question was whether the judgment-debtor should be joined as party to the aforesaid case under Rule 97 by the decree-holder. It was held that the third party cannot make a grievance that the judgment-debtor himself was not made party. The aforesaid case cited by the learned counsel for the petitioner is besides the point. In the instant case judgment-debtor was a party.

8. Considering the arguments of the learned counsel for the petitioner at length, I am of the view that there is no error in the orders, substantial justice has been done by the impugned orders and it is not a fit case for interference under Article 226 of the Constitution of India.

9. The petition, consequently, fails and is hereby dismissed summarily.

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