

Savitri Devi Vs. Ashok Kumar

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Court : Allahabad

Decided On : Apr-27-2009

Reported in : 2009(3)AWC2508

Judge : Tarun Agarwala, J.

Appellant : Savitri Devi

Respondent : Ashok Kumar

Disposition : Petition dismissed

Judgement :

Tarun Agarwala, J.

1. Heard Sri Shahid Masud, the learned Counsel for the petitioner and Sri H. P. Misra, the learned Counsel for the plaintiff-decree holder.

2. A suit for specific performance of a contract was decreed by the trial court and the trial court directed the defendant to take the balance amount of Rs. 1,000 from the plaintiff and thereafter execute the sale-deed within two months, failing which the Court would be constrained to execute the sale deed at the cost of the judgment debtor. It transpires that the Judgment debtor did not comply with his part of the condition and consequently, the decree was put into execution. Amongst various objections raised by the judgment debtor, one such objection

raised was that the condition contained in the decree was not complied by the decree holder and that he had not deposited the amount of Rs. 1,000 within the stipulated period as directed by the trial court. The executing court rejected the objection and permitted the decree holder to deposit the amount before the executing court on payment of cost of Rs. 500. The judgment debtor, being aggrieved by the said order, filed a revision which was also dismissed. Consequently, the writ petition.

3. The learned Counsel for the petitioner submitted that the executing court could not enlarge the time for deposit of the balance amount and that it was only the trial court which could have extended the time and therefore, the order of the executing court was patently without Jurisdiction. The learned Counsel submitted that in view of the provisions of Section 28 of the Specific Relief Act, the decree could not be executed and the contract was liable to be rescinded, if any. The learned Counsel for the petitioner further submitted that in view of the provisions of Section 148 of the C.P.C., the executing court could not extend the time. In support of his submissions, the learned Counsel placed reliance upon a decision of the Division Bench of this Hon'ble Court in Allahabad Development Authority v. Saifuddin and Ors., : AIR 1999 All 40 : 1998 (3) AWC 1621, and of a decision in V.S. Planichamy Chettiar Firm v. C. Alagappan and Anr. AIR 1999 SC 918 : 1999 (2) AWC 1033 (SC), wherein the Supreme Court held that the executing court could extend the time when the trial court and the executing court are one and the same Court. The learned Counsel for Lit' petitioner further placed reliance on a decision of the Supreme Court in Chanda (dead) through L.Rs. v. Rattni and Anr. : AIR 2007 SC 1514 : 2007 (2) AWC 1903 (SC), and contended that the executing court committed an error in relying upon this Judgment in holding that the executing court could extend the time whereas, in fact, the said judgment does not indicate any such direction.

4. Having heard the learned Counsel for the petitioner at some length this Court finds that the impugned order does not suffer from any error of law. The executing court was justified in granting time to the decree holder to deposit the balance amount as per the decree of the trial court. A perusal of the order of the trial court indicates that a specific direction was issued to the judgment debtor to execute the

sale-deed within two months, failing which, it was open to the decree holder to get the sale deed executed through the process of the Court. The specific period was only confined to the Judgment debtor and no direction was given to the decree holder to deposit the balance decretal amount within a specified period. Consequently, after the execution application was filed, the executing court was justified in granting time to the decree holder to deposit the balance amount in the Court on payment of cost. This time, being granted, was patently justified and was within the jurisdiction of the executing court. The judgments cited by the learned Counsel for the petitioner apparently has no application to the present facts and the circumstances of the case. In fact, the Judgment of the Supreme Court in the matter of V.S. Palanickamy Chettiar Firm (supra), clearly indicates that the executing court, can in given circumstances, enlarge the time for deposit of the balance amount by the decree holder provided the executing court and the trial court is one and the same. There is nothing to indicate in the present case that the executing court was a different Court than that of the trial court.

5. In view of the aforesaid, this Court does not find any error in the impugned order and is dismissed summarily.