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Om Prakash Vs. Addl. District and Session Judge, Kanpur Nagar and Others

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Court : Allahabad

Decided On : Aug-20-1999

Reported in : 1999(4)AWC3044

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47 - Order 9, Rule 13; Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 20; [Constitution of India](#) - Article 227

Appeal No. : C.M.W.P. No. 35216 of 1999

Appellant : Om Prakash

Respondent : Addl. District and Session Judge, Kanpur Nagar and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : S.R. Verma, Adv.

Judgement :

D.K. Seth, J.

1. Leave granted to convert the petition into one under Article 227 of the Constitution of India.

2. The petitioner has challenged the order dated 1st May. 1999 passed by the learned District Judge, Kanpur Nagar in Civil Revision No. 102 of 1999 affirming the order dated 19th March, 1999 passed by the learned Civil Judge (Junior Division), Kanpur Nagar in Execution Case No. 39 of 1997. It is alleged that the suit properly consists of a building and as such comes under the purview of U. P. Urban Buildings (Regulation of Letting Rent and Eviction) Act. 1972. therefore, the civil court could not have assumed Jurisdiction and pass the decree by reason of Section 20 of the said Act, which provides bar of suit before the civil court prescribing the forum before which such proceedings are to be initiated. The trial court had dismissed the said objection under Section 47 of the Code of Civil Procedure on the ground that the suit property was described as a vacant land and the decree was so obtained. The revisional court had found that the land was a vacant land and the receipt granted to the petitioner was that of a vacant land. However, the petitioner had sought to produce receipt, which was disbelieved by the executing court to the extent that it does not seem to be genuine since there was interpolation.

3. Mr. S. R. Verma, learned counsel for the petitioner contends that by reason of provisions contained in Section 47 of the Code, all questions relating to the decree shall be gone into in the proceedings under Section 47 of the Code and not by a separate suit. Therefore, this is a question which should have been decided by the Court.

4. I have heard learned counsel for the petitioner.

5. It appears that both the court below did not refuse to entertain the application on the ground of Jurisdiction or anything else. On the other hand. It has been decided on merits disbelieving the receipt produced by the petitioner. Then again. Section 47 of the Code clearly indicates that all questions relating to execution, discharge and satisfaction of the decree can be gone into. Any question which is not related to the execution, discharge or satisfaction of the decree cannot be gone into.

6. In the present case, even the jurisdiction of the Court is being challenged in view of Section 20 of the said Act, which. In fact, amounts to going behind the decree.

7. In the present case, the question as to the validity of the decree has since been challenged. It is the question of Jurisdiction to pass the decree which is challenged, Thus. It relates back to a stage before the decree was passed. The executing court cannot go behind the decree. By means of the objection that has been raised, the Judgment debtor seeks a relief of declaration that the decree being without Jurisdiction is void and a nullity. Thus, it is not a question related to the execution, discharge or satisfaction of the decree. If this question is to be decided under Section 47 by the executing court, then it will be going behind the decree, which it cannot.

8. Be that as it may. Both the courts below had disbelieved the receipt produced by the petitioner. The suit having been decreed ex parte, the said receipt was not proved in the suit. Therefore, at this stage. In these proceedings, no observation with regard thereto should be made since the petitioner had filed already an application under Order IX. Rule 13 of the Code, which is alleged to be pending. Therefore. I refrain from making any observation with regard to the said receipt. The observation with regard to receipt made by both the courts below will be tentative for the purpose of decision on this application. Since it has been decided on merits, this Court sitting in revlsional Jurisdiction cannot enter into such question which relates to finding of fact with regard to the question of believing or d Is-believing. Therefore, there is no merit in this petition.

9. The writ petition therefore, falls and is accordingly dismissed. Nocost.

10. Counsel for the petitioner prays that till a decision on the application under Order IX, Rule 13 of the Code is arrived at, there should be a stay of the execution proceedings. But such' said relief cannot be granted within the scope and ambit of this writ petition. It may be open to the petitioner to apply for stay before the Court where the application under Order IX, Rule 13 ofthe Code is alleged to be pending, ifhe is no advised.