

Maln Pal Singh Vs. Second Additional District Judge and ors.

Maln Pal Singh Vs. Second Additional District Judge and ors.

SooperKanoon Citation : sooperkanoon.com/485998

Court : Allahabad

Decided On : May-10-2004

Reported in : 2004(4)AWC3585

Judge : Arun Tandon, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 60 and 151 - Order 21, Rule 58

Appeal No. : C.M.W.P. No. 6820 of 1995

Appellant : Maln Pal Singh

Respondent : Second Additional District Judge and ors.

Advocate for Def. : Moti Lal, Adv. and ;H.S. Mishra, S.C.

Advocate for Pet/Ap. : C.S. Sharma and ;A.K. Sharma, Adv.

Disposition : Petition allowed

Judgement :

Arun Tandon, J.

1. This writ petition is directed against the order passed by the Executing Court dated 3rd January, 1994 passed in three different Misc. Execution Cases No. 16/90, 17/90 and 18/90 as also against the order passed by the Second Additional

District Judge, Sultanpur in Civil Revision No. 27/94, 28/94 and 29/94, dated 7.12.1994, whereby all the revisions have been clubbed and decided together.

2. The petitioner filed Original Suit No. 50 of 1972 for specific performance of the agreement to sell, executed by Tara Chand in favour of the petitioner dated 25.8.1971. During the pendency of the said suit, Sri Tara Chand is alleged to have executed a sale deed of the same property in favour of Sri Dhyan Singh dated 13.12.1973. The plaintiff accordingly moved an amendment application along with an impleadment application in the said suit. The suit was finally decreed by the trial court after allowing the amendment and impleadment applications on 11.8.1977. In the said suit Sri Dhyan Singh was made a party.

3. Feeling aggrieved by the aforesaid order of the trial court three sets of appeals were filed. One by the plaintiff in so far as the suit was decreed only against the defendant No. 1. The other two by the original owner of the property Sri Tara Chand and by the other purchaser Sri Dhyan Singh. The appeal filed by the plaintiff was allowed, while the appeals filed by the original owner Sri Tara Chandra and other purchaser Sri Dhyan Singh were dismissed by the First Appellate Court dated 4.5.1978.

4. Feeling aggrieved by the aforesaid order of the first appellate court, Sri Dhyan Singh filed Second Appeal in the Hon'ble High Court of Judicature at Allahabad. The appeal was dismissed by this Court on 22.9.1983.

5. The petitioner put the Judgment and decree of the trial court to execution, which was numbered as Execution Case No. 76 of 1977 against defendant No. 1 only. When his appeal was allowed, a fresh Execution Case No. 54 of 1978 against all the defendants including Sri Dhyan Singh was filed. In the said execution proceedings before the executing court on 6th October, 1977 the sale deed was executed under the order of the Court and was forwarded for registration to the Sub-Registrar wherein certain objections were raised. During the pendency of the aforesaid proceedings Sri Dhyan Singh filed a collusive suit against Sri Tara Chand, which was numbered as 149 of 1984. In the said suit plaintiff petitioner was not impleaded as a party. The said suit was filed for recovery of the money paid by the purchaser to the original owner in respect of the land in question. The

said suit was decreed and the decree was put to execution, which was numbered as Execution Case No. 5 of 1985.

6. Objections were filed by the petitioner In the aforesaid Execution Case No. 5 of 1985 under Section 60, Order XXI Rule 58 read with Section 151, C.P.C. Objections were registered as Misc. Case No. 111 of 1985.

7. Similarly, objections were filed by Sri Dhyan Singh and Tara Chand in Execution Case No. 54 of 1978, initiated by the petitioner, which was numbered as Misc. Case No. 101 of 1987.

8. All the aforesaid three misc. cases before the executing court were listed on 11th January, 1990 and 12th January, 1990. On the said date because of absence of decree holder petitioner and his counsel, the executing court rejected the execution case as well as objections filed by the plaintiff in respect of Execution Case No. 5 of 1985 and Misc. Case No. 111 of 1985 and on the same date it allowed the objections filed by Dhyan Singh, which was numbered as Misc. Case No. 101 of 1987.

9. On 27th January, 1990, i.e., well within the period of limitation of 30 days, an application was filed by the plaintiff for recall of the aforesaid order on the ground that between 10th January, 1990 to 23rd January, 1990 the plaintiff was seriously ill and was confined to bed and there is only one minor son in his family so he was not able to be present before the Court.

10. On behalf of Sri Dhyan Singh and Tara Chand a reply was filed to the said application and it was alleged that on 15th January, 1990 the petitioner was present in the Court of Deputy Director of Consolidation, Sultanpur, consequently the case set up for absence on 11th and 12th January was factually not correct. The executing court rejected the said application of the plaintiff on 3rd January, 1994.

11. Feeling aggrieved by the aforesaid order the petitioner filed three revisions before the Additional District Judge, Sultanpur, which were numbered as Revision Nos. 27/94, 28/94 and 29/94, all the three revisions have been dismissed by the

Second Additional District Judge, Sultanpur by means of the impugned order dated 7.12.1994. Hence the present writ petition.

12. I have heard counsel for the parties and have gone through the record of the writ petition.

13. The order passed by the executing court dated 3rd January, 1994 and passed by the Additional District Judge, Sultanpur dated 7.12.1994 are totally unjustified and unsustainable in the eyes of law.

14. It is not in dispute that the petitioner has been litigating right since 1972 and ultimately, when he put the decree to execution he has been denied the fruits of the same. The courts below have adopted hyper-technical view in denying the petitioner the benefit of the said judgment and decree. The approach of the Courts cannot be appreciated. Even if on a particular date the petitioner was not present before the executing court and there was some negligence on his part in that regard, the courts below should have condoned the said negligence in the facts of the case specifically when an application to recall the orders was filed well within limitation. Even otherwise, from the record of the proceedings before the Consolidation Authorities, it was not proved beyond doubt that the petitioner was present before the Consolidation Authorities personally on the alleged date. There was no material to disbelieve the reasons assigned by the petitioner for his absence before the executing court on the relevant date.

15. The defendants Dhyan Singh and Tara Chand have apparently colluded despite the judgment and decree, which had become final between the parties upto the High Court as early on 22.9.1983. The aforesaid two persons filed a collusive suit and obtained a decree in suit No. 149 of 1994 and on the basis of the said judgment and decree to which petitioner is not party, all kinds of objections are being raised in the execution filed by the petitioner.

16. In such circumstances, the Court should have adopted liberal attitude particularly with regard to absence of petitioner on the date order dated 11th and 12th January, 1990 were passed specifically in the circumstances when the application for recall of the said order was filed within the limitation. The Courts are

bound to act in the interest of justice and technicalities cannot be permitted to be taken shelter of for denying substantial justice. The Hon'ble Supreme Court in the judgment in Ghanshyam Dass and Ors. v. Dominion of India and Ors., (1984) 3 SCC 46, has specifically held that substantial justice and technicality if pitted against each other, the cause of substantial justice should not be defeated on technicalities.

17. In the circumstances stated above, this Court is satisfied that the approach adopted by the authorities in dismissing the objections as well as execution case filed by the petitioner and in ex parte decreeing the objections filed by Sri Dhyan Singh and Tara Chand against the decree of petitioner by way of technicalities could not be sustained.

18. In view of the aforesaid, the orders passed by the executing court dated 3rd January, 1994 and passed by the Additional District Judge, Sultanpur dated 7.12.1994 are hereby set aside.

19. The matter is remanded to executing court to decide the Execution Case No. 5 of 1985 and Misc. Case No. 111 of 1985 at the earliest possible, preferably within a period of four months from the date a certified copy of this order is produced before the Executing Court.

20. With these observations, writ petition is allowed. No order as to costs.