

Gokul Prasad Vs. Chunnilal and Another

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Court : Chhattisgarh

Decided On : May-09-2001

Reported in : 2001(3)MPHT32(CG)

Judge : Mr. R.S. Garg, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 52; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 11 and 115 - Order 21, Rules 97, 98 and 102

Appeal No. : Civil Revision No. 17/2000

Appellant : Gokul Prasad

Respondent : Chunnilal and Another

Advocate for Def. : Shri Ajay Shrivastava, Adv.

Advocate for Pet/Ap. : Shri H.B. Agrawal, Adv.

Disposition : Civil revision dismissed

Judgement :
ORDER

R.S. Garg, J.

1. When the decree passed in favour of respondent No. 1/decrcc holder was put into execution, the present applicant made an application under Rules 97/98 of

Order 21 of the Code of Civil Procedure pleading inter alia that he being the third party to the decree and as he is in possession of the property in his own rights, in execution of the said decree passed against respondent No. 2 the present applicant could not be dispossessed. The decree holder/ respondent No. 1 contested the said application. The Trial Court rejected the application observing that an application under Rules 97/98 of Order 21 of the Code of Civil Procedure was not maintainable at the instance of a third party who was still in possession of the property. It accordingly rejected the application. Being aggrieved by the said rejection the objector has come to this Court under Section 115 of the Code of Civil Procedure.

2. Shri H.B. Agrawal, learned counsel for the applicant, submits that the rejection of the application on the ground of maintainability was per se illegal because such an application is always maintainable at the instance of the third party. He also submits that the earlier decree was passed against respondent No. 2 in a suit between the landlord and the tenant and therefore, said decree would not assist the decree holder when the applicant was raising the objections relating to the title over the property.

3. On the other hand, Shri Ajay Shrivastava, learned counsel for respondent No. 1, submits that though the application of the present objector was rejected as not maintainable but even otherwise the said application was not maintainable in view of the Rule 102 of Order 21 of the Code of Civil Procedure. According to him the property in dispute was purchased by present objector after the suit was already instituted by the decree-holder against respondent No. 2 tenant for his eviction. He further submits that the findings recorded in the said suit would not only bind the tenant but would also bind his successor who is claiming through the tenant. He submits that the application filed by the present applicant/objector was misconceived and it now even deserves to be rejected.

4. There is no dispute before me that respondent No. 1 had filed the suit against respondent No. 2 for his eviction. The said Civil Suit No. 57-A of 1991 was decreed by the Second Civil Judge, Class II, Durg on 15-2-1995. In the said suit the Court recorded the finding that the plaintiff was the owner/ landlord and

respondent No. 2 was the tenant. The defendant/respondent No. 2 had raised the plea that the said defendant was the owner of the property and if any decree was obtained by the plaintiff landlord against his father the said decree being an outcome of fraud was not binding upon the defendant/ respondent No. 2. While deciding issue No. 2 the Trial Court recorded the finding that the decree passed in Civil Suit No. 7-B of 1965 on 3-9-1973 was not obtained by fraud. The Court after recording the finding that respondent No. 1 was the landlord and the present respondent No. 2 was the tenant, granted a decree for eviction against respondent No. 2. From the documents annexed with the present revision-petition it would clearly appear that the present objector had purchased the property somewhere in the year 1996 that is much after the decree was passed against respondent No. 2.

5. Section 11 of the Code of Civil Procedure clearly provides that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. Section 52 of the Transfer of Property Act puts a bar against the defendant in transferring the property while the suit is pending. The said principle is known as transfer pendente lite. Rule 102 of Order 21, CPC, in fact, is a juxtapose reading of Section 11 of Code of Civil Procedure and Section 52 of the Transfer of Property Act. Rule 102 of Order 21 clearly provides that nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person. The transfer referred to in Rule 102 includes a transfer by operation of law.

6. The principles of equity and good conscience in fact have been employed in Rule 102. If a wrong protection is given to a transferee pendente lite then a decree-holder would never be able to get the fruits of his decree because every time he seeks a direction from the Court that the decree is executable against the transferee, then another transferee would come and resist the execution of the

decree by causing obstructions.

7. In view of Rule 102 of Order 21 of the CPC the objections raised by the present applicant were not maintainable.

8. Shri Agrawal at this stage submits that the earlier suit had nothing to do with the title of the parties because the same was a matter between the landlord and the tenant and as the present applicant is raising a dispute relating to title the Court below could not reject the objections summarily.

9. The objection is misconceived. In the earlier suit the vendor of the present applicant in his capacity as the defendant had raised two substantial defences; firstly that he was owner of the property and there was no relationship of landlord and tenant, and secondly that the earlier decree passed against the father of the defendant was obtained by playing fraud. Both these questions were decided against the interest of the defendant/present respondent No. 2. If the said findings would bind the party to the suit then a person who steps in the shoes of such party, would also be bound by those findings. A purchaser from a judgment-debtor cannot set up a better title than what his vendor had. If the vendor was held to be a tenant then the said vendor cannot convey a perfect title or absolute title in favour of the purchaser.

10. Taking the case from any angle it cannot be said that the present applicant has a better title in comparison to what was transferred to him by his vendor. The objections were rightly rejected though on the wrong premises.

11. In view of the above legal position I am unable to hold that the objections filed by the present applicant deserve any consideration or have any substance. The revision is dismissed.

12. Civil Revision dismissed.