**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**Kangalu Vs. Parau**

**Kangalu Vs. Parau**

**SooperKanoon Citation** : sooperkanoon.com/496561

**Court** : Chhattisgarh

**Decided On :** Jan-17-2005

**Reported in** : AIR2006Chh47

**Judge** : Fakhruddin, Actg. C.J.

**Appeal No.** : C.R. No. 141 of 2001

**Appellant** : Kangalu

**Respondent** : Parau

**Advocate for Pet/Ap.** : T.K. Tiwari, Adv.

**Disposition** : Petition dismissed

**Judgement** :
ORDER

Fakhruddin, Actg. C.J.

1. Heard.

2. The revision is preferred against the order dated 14-2-2001 passed by the Civil Judge Class-II, Durg, in Execution case No. 31-A/ 97 whereby warrant of possession has been issued.

3. The plaintiff/respondent filed a suit for possession on the ground that the plaintiff and defendant both are real brothers and when the defendant came to Bhilai in search of employment In Bhilai Steel Plant, he sought permission of the plaintiff to live in a portion of the house owned by the plain- tiff, as he was not having any house, on the assurance that as soon as he will get the house he will vacate the same. It is stated that though the defendant got the house and became permanent employee of Bhilai Steel Plant but did not vacate the house. Therefore, the suit was filed by the plaintiff. The defendant denied the claim.

4. The trial Court framed initially nine -issues and thereafter two additional issues i were framed. The trial Court on the basis of material on record and the evidence led by the parties passed the judgment and decree dated 5-5-1997 that the plaintiff should be given vacant possession of the house after removing the defendant. Para 17 of the said Judgment is quoted below :

17 lgk;rk ,o oknO; ;&oknh; vkius lk{; rFkk nLrkost is viuk nkok iekf.kr djus es lQy jgk gS vr% mldk nkok Lohdkj fd;k tkrk gS fd &1 oknh dks oknxzLr edku is izfroknh dks gVkdj edku dk [kkyh dOtk fnyk;k tkos A2 izdj.k dks ifjfLFkfr;ks ds vk/kkj ij mHk;i{kdkj viuk viuk okn O;; ogu djs A3 vf/koDrk 'kqYd izekf.kr gksus ij fu;ekuqlkj fn;k tkos A rn`uqlkj vkfIr cukbZ tkos A

5. The decree was accordingly drawn.

6. During execution, counsel for defendant raised question about identity. The executing Court considered and by the impugned order rejected the same holding that identity is well established as the Decree Holder had purchased the house by sale deed duly registered which contains Khasra number of suit house.

7. On perusal of the record, it appears that the suit was filed in the year 1992 and the decree is of the year 1997. Against the judgment and decree, the defendant preferred a first appeal, which was dismissed. Copy of the first appeal has not been filed. Admittedly, the defendant did not prefer a second appeal. The decree has reached the finality. The decree is between the two brothers. The identity which the defendant/applicant is now raising, were never raised before the trial Court nor is stated to have been raised before the lower appellate Court. No

particular as such was sought for. Nothing has been stated in the written statement that the defendant has not been able to understand about it. This revision itself is pending since 2001 and though time had been taken, even the typed copies of the plaint and the written statement have not yet been filed. All this goes to show that only object is to delay and the process is being misused by the judgment debtor. Once the decree has attained the finality, it has to be executed and there has to be some end, otherwise the persons will lose faith in the judicial system.

8. The Apex Court more or less under the same circumstances in the case of Ravinder Kaur v. Ashok Kumar reported in 2003 AIR SCW 7158 laid down the law as under :

The site plan of the suit shop was annexed to the eviction petition. The tenant did question its correctness. An issue was also raised. But no arguments were addressed or evidence led in support of the objection disputing the correctness of the site plan. The tenant in his evidence in fact admitted its correctness. Eviction decree was passed. Against it an appeal was filed before the appellate authority, a revision before the High Court and an SLP before the Supreme Court and in none of those proceedings this issue was agitated. The tenant did not handover possession to the landlady despite undertaking given to High Court. The landlord was compelled to file an execution petition. In the execution petition repeated attempts were made by the tenant to again revive the issue of identity of the property as also the description of the boundaries of the suit property. The executing Court time and again rejected this contention holding that this issue is already settled in the original ejectment proceedings, hence, same cannot be reopened. The respondents even moved the High Court in between in revision challenging the rejection of their prayer as to the identity of the property which also came to be rejected by the High Court observing strongly that all these were attempts on the part of the respondents-tenants to delay the execution proceedings. It is only after such attempts of the tenant having failed before the High Court, the landlady was given possession of the suit property by the Bailiff under the orders of the executing Court by breaking open the lock with police help, the issuance of delivery warrant was challenged by tenant before High Court in

revision. The High Court allowed the revision directing executing Court to first consider the objections raised by the respondents before taking steps to issue warrants of possession and during the pendency of such consideration it further directed restoration of possession in favour of the tenant.

Held, the order passed in revision was wholly erroneous. Court of law should be careful enough to see through such diabolical plans of the judgment-debtors to deny the decree-holders the fruits of the decree obtained by them. This type of errors on the part of the judicial forums only encourage frivolous and Cantankerous litigations causing laws delay and bringing bad name to the judicial system.

9. This Court has gone through the order passed by the Executing Court dated 14-2-2001. The Executing Court has considered that the disputed house was purchased by the Decree Holder by registered sale deed and the same is on Khasra No. 273/3 and the house is constructed on that Khasra and it is the said house which has got to be evicted and possession is to be delivered to the decree holder and the Court below has given categorical finding that identity is well established. The Court has further found that the house in which the judgment, debtor is living has to be delivered to decree holder.

10. In view of the facts and circumstances of the case and the material on record as discussed hereinabove, there Is no infirmity in the order. The petition fails and is dismissed,

11. Consequently, M.C.P. No. 236/2001 is rejected.

**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**