

Vidya Devi Vs. Badri Yadav

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Court : Jharkhand

Decided On : Jun-03-2003

Reported in : [2003(3)JCR422(Jhr)]

Judge : M.Y. Eqbal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 and 151

Appeal No. : Civil Revision No. 451 of 2002

Appellant : Vidya Devi

Respondent : Badri Yadav

Advocate for Def. : Jawahar Prasad and; M.K. Mishra, Adv.

Advocate for Pet/Ap. : N.K. Prasad, Sr. Adv. and; Ashok Kr. Sinha, Adv.

Disposition : Civil revision dismissed

Judgement :

M.Y. Eqbal, J.

1. This Civil Revision Application, at the instance of the plaintiff decree holder-petitioner, is directed against the order dated 29.11.2002 passed by Munsif 1st Court, Dhanbad in Miscellaneous Case No. 11/2001 arising out of Execution Case No. 25/99 whereby he has allowed the objection filed by the judgment debtor-

opposite party under Section 47 of the Code of Civil Procedure (in short C.P.C.) and directed the Nazir, Civil Court, Dhanbad to restore possession of the standing on Survey Plot No. 66 under Khata No. 140 of Mouja, Dhanbad.

2. The facts of the case, in brief, is that the plaintiff-petitioner filed Title Suit No. 60/90 for eviction of the defendant from Schedule-C property fully described at the foot of the plaint comprised within Khata No. 31, Plot No. 67, Holding Nos. 56 and 58 of Ward No. VI (old) of Dhanbad Municipality measuring an area of 5 kathas. The suit was decreed on 5.02.1997 and the judgment and decree was confirmed upto the Supreme Court. The petitioner then levied Execution Case No. 25/99 and the Court below issued writ of delivery of possession. It is contended by the petitioner that possession of the decretal premises as described with reference to the boundaries, was delivered to the petitioner on 6.02.2001, 7.02.2001 and 9.02.2001 in presence of the Magistrate and the Police Force, The judgment debtor-opposite party immediately, after delivery of possession filed objection on 13.02.2001 under Section 47 read with Section 151, CPC. Challenging inter alia that in course of giving delivery of possession the Nazir of the Civil Court illegally delivered possession of the houses standing over Plot No. 66 under Khata No. 31 which was not the subject matter of the decree passed by the Court. It was alleged that despite objection raised by the opposite party the Nazir of the Civil Court, in connivance with the decree holder, forcefully took delivery of possession of the houses standing on Plot Nos. 62 and 66. The opposite party, therefore, prayed in that application for restoration of possession of the house premises. The said objection was registered as Miscellaneous Case No. 11/2001. The petitioner-decree holder filed rejoinder to the said objection and refuted all the allegations made by the opposite party.

3. The Court below, after recording evidence of the parties and after considering the report of the survey knowing pleader commissioner who was appointed for that purpose, came to the conclusion that in course of delivery of possession the Nazir of the Civil Court has unauthorisedly delivered possession of the houses standing on Plot No. 66 from where the judgment debtor has been forcibly dispossessed. The Court below, accordingly, passed the impugned order directing restoration of possession of those houses.

4. Mr. N.K. Prasad, learned Senior counsel appearing for the petitioner-decree holder, assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel submitted that the Executing Court had no jurisdiction to entertain second objection filed under Section 47, C.P.C, inasmuch as earlier the judgment debtor had filed objection under Section 47, C.P.C. which was dismissed by the Court. Learned counsel secondly submitted that the Executing Court had no jurisdiction to appoint pleader commissioner for the purpose of deciding objection under Section 47, C.P.C. Learned counsel further submitted that the Court below has acted with material irregularity in the exercise of its jurisdiction by taking evidence for deciding objection under Section 47, C.P.C. According to the learned counsel the Executing Court has to take the decree as it is and to execute the same except where the decree is a nullity, I do not find any force in the submission of the learned counsel.

5. It is well settled that the question arising between the parties or their representatives relating to execution, discharge and satisfaction of decree must be decided by the Executing Court and not by a separate suit. The law prohibits not only a suit between the parties and their representatives but also a suit by a party or his representative against an auction purchaser. If there is any dispute about the identity and substance of the subject-matter of the decree, nobody but the Executing Court can decide. It is equally well settled that while construing a decree the Executing Court is competent to take assistance of the pleadings of the parties and the judgment for that purpose.

6. In the case of Bibi Wakilan v. Bibi Kasiman, AIR 1930 Pat 536, a Division Bench of the Patna High Court, while considering the scope of Section 47, C.P.C. observed (by Hon'ble Wort, J.) that if, in fact, decree holder has been given possession of the plots which are not the subject matter of the suit then certainly the judgment debtor has remedy apart from Section 47, C.P.C.

7. In the Case of Matiur Rahman Khan v. Sonu Lal and Ors., AIR 1938 Pat 195, a similar question was considered and while delivering judgment, His Lordship, Fazal Ali, J, observed :--

'Now it is well settled that an Executing Court has no right to go behind the decree or in any way to add too or amend the terms thereof. It has to execute the decree as it stands and any amendment thereof can be made only by the Court, which passed the decree. It is however the duty of the Executing Court to ascertain the property which is the subject of the decree and for this purpose it is entitled to look at the paramount description of the property.'

8. So far first objection raised by Mr. Prasad with regard to maintainability of the second objection under Section 47, C.P.C. is concerned, it appears that earlier objection under Section 47, C.P.C. was filed immediately after receipt of the notice under Order XXI, Rule 22, C.P.C. The objection raised by the judgment debtor was with regard to maintainability of the execution proceeding on account of misjoinder and non-joinder of the parties. The Executing Court dismissed the said objection petition on the ground that general and vague allegation has been made by the judgment debtor in the said objection petition. The objection petition which is under consideration was filed only after delivery of possession was effected and on a different cause of action alleging inter alia that while effecting delivery of possession some other properties which are not the subject matter of the decree, have been delivered to the decree holder. Such objection cannot be held to be barred by the principles of res judicata or not maintainable on any other ground.

9. In the objection filed by the judgment debtor-opposite party under Section 47, C.P.C. it was contended that the suit was decreed in respect of Schedule-C property comprised within Plot No. 67 under Khata No. 31. Holding Nos. 56 and 58 measuring an area of 5 kathas but delivery of possession was effected by the Nazir of the Civil Court forcefully in respect of the houses standing on Plot No. 66, which was not the subject matter of the decree. It appears that in order to find out substance in the objection petition and also to ascertain the identity of the property the Executing Court appointed a survey knowing pleader commissioner who, after making thorough survey, submitted his report to the effect that the houses stand on Plot No. 66 and not on Plot No. 67. The Executing Court also recorded the evidence of the witnesses including the nazir of the Civil Court. After considering the entire facts and evidence brought on record including the report of the survey knowing pleader commissioner the Executing Court recorded a finding that in

execution of the decree possession of the houses in question which were not the subject matter of the decree, has been delivered illegally to the petitioner-decree holder.

10. From perusal of the impugned order, it appears that the finding of the Executing Court is based on evidence given by the witnesses including the Nazir who deposed that delivery of possession was effected on the identification of the property of the decree holder without ascertaining whether the houses in question were the subject matter of the decree. Learned counsel appearing for the petitioner could not bring to my notice any strong evidence against the finding recorded by the Executing Court. As observed by me, it is well within the jurisdiction of the Executing Court to entertain such objection and while deciding the objection Court can go into the pleadings of the parties and also the judgment and decree. In such circumstance it cannot be held that the Executing Court has exceeded his jurisdiction while passing the impugned order.

11. For the aforesaid reasons. I do not find any merit in this Civil Revision application which is, accordingly, dismissed.