

Paramananda Panda Vs. Krushna Chandra Panda and ors.

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SooperKanoon Citation : sooperkanoon.com/526608

Court : Orissa

Decided On : Sep-07-1989

Reported in : AIR1990Ori188; 69(1990)CLT170

Judge : C.B. Patnaik, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 94 and 151 - Order 21, Rule 29

Appeal No. : Civil Revn. No. 781 of 1985

Appellant : Paramananda Panda

Respondent : Krushna Chandra Panda and ors.

Advocate for Def. : B.K. Pal, Adv.

Advocate for Pet/Ap. : S. Misra, Adv.

Disposition : Petition dismissed

Judgement :

C.B. Patnaik, J.

1. Plaintiff is the petitioner and being aggrieved by the order dt. 19-10-1985 passed by the Subordinate Judge, Jajpur, refusing the plaintiff's prayer to stay the further proceedings of Execution Case No. 17 of 1984 has filed the revision.

2. The plaintiff filed the suit (T.S. 140 of 1985) with the prayer that Schedule-B of the plaint schedule property be partitioned and for a declaration that the decree in Title Suit No. 16 of 1979 does not bind the plaintiff, on the allegation that defendant No. 11, Madan Mohan Panda had filed the earlier Title Suit No. 16 of 1979 in the Court of the Subordinate Judge, Jajpur, wherein the plaintiff's father was a party and obtained a decree therein by intentionally excluding the plaintiff from the suit and by exercising undue influence on his father and in the process the plaintiff was denied of his due share in the ancestral property. For course of the said suit, the plaintiff also filed in application for stay of execution case. No. 17 of 1984. Though the said application was styled to be an application under Section 94 Civil P.C. but essentially the same is one under Order 21, Rule 29 of the Civil P.C. The learned Subordinate Judge came to the conclusion that the ratio indicated in the case of *Judhistir v. Surendra*, AIR 1969 Orissa, 238, had full application to the facts and circumstances of the present case and accordingly, the prayer for stay of further proceedings of execution case was rejected. It is this order that is being assailed in this revision by the plaintiff.

3. Mr. Misra appearing for the petitioner contends that as the petition in question was labelled as one under Section 94 Civil P.C. the learned Subordinate Judge on that ground rejected the plaintiffs application and, therefore, the impugned order is vitiated. If the plaintiff's application for stay of further proceedings in the execution case would have been rejected solely on the ground as contended by the learned counsel for the petitioner, then there would have been no difficulty in interfering with the said order, since it is too well settled that a wrong labelling of an application cannot determine the issue and will not take away the jurisdiction of the court if actually the court has the jurisdiction under any provisions of the Code. But the impugned order, on the other hand, clearly indicates that the court below has considered the application as one under O, 21, Rule 29, Civil P. C. and held that such a prayer could not be granted in the facts and circumstances of the present case since according to the court below the provision under Order 21, Rule 29 being of a very extraordinary nature it should be granted only when an extraordinary case is made out. The learned subordinate Judge has observed that since the plaintiff has not made out any extraordinary case, he is not entitled to the relief sought. In this view of the matter, the first contention of Mr. Misra has no

substance and is accordingly rejected.

4. The next question which Mr. Misra for the plaintiff-petitioner urges is that it is true that Order 21, Rule 29, Civil P.C. is an extraordinary power and, therefore, unless an extraordinary case is made out, the execution case filed under another decree should not be stayed, but according to him the present case is one of those extraordinary cases where the further proceedings in the execution case should have been stayed by the court below. In order to appreciate the correctness of the aforesaid submission, it would be appropriate to examine the provisions contained in Order 21, Rule 29, Civil P.C. The said rule is extracted hereinbelow in extenso :--

'29. Stay of execution pending suit between decree-holder and judgment-debtor.--

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :

Provided that if the decree is one for payment of money, the court shall, if it grants stay without requiring security, record its reasons for so doing.'

The aforesaid provision makes it explicitly clear that an execution case can be stayed to enable the judgment-debtor and the decree-holder to adjust their claims against each other and to prevent multiplicity of execution proceedings. Therefore, a suit by the judgment-debtor against the decree-holder must be pending in order that Rule 29 can be made applicable. Admittedly, the plaintiff is not a judgment-debtor as he was not a party to the previous suit. Therefore, in terms, Rule 29 of Order 21 cannot be said to be applicable to the present case. On this short ground that plaintiff's prayer can be rejected. When the afore-said position was confronted, Mr. Misra appearing for the plaintiff-petitioner also conceded that Rule 29 in terms might not be applicable since the plaintiff was not the judgment-debtor in the earlier suit the decree of which was being executed.

5. The learned counsel then urges that in such a case, the court should stay the further proceedings in exercise of power under Section 151, Civil P.C. since ends of justice so require. Before considering the said question of applicability of S, 151, C.P.C., I must consider the merits of the petitioner's case as to whether an extraordinary case has been made out so as to invoke the jurisdiction of the Court under Rule 29 of Order 21, Civil P.C. The aforesaid Rule came up for consideration before a learned single Judge of this Court in the case of *Judhistir v. Surendra*, AIR 1969 Orissa 233 and it was held by this Court :--

'The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to set aside the decree might succeed. Such suits are also of a very precarious nature. The allegations therein ordinarily would be that the previous decree was obtained by fraud or collusion or that the decree was not binding on the present plaintiff as the transaction entered into by the judgment-debtor was tainted with immorality. These are all suits of uncertain and Speculative character. Most of these cases are likely to fail the onus being very heavy on the plaintiff to establish fraud and similar charges. That being the position, a person should not be deprived of the fruits of his decree merely because suits of frivolous character are instituted and litigants are out after further series of litigations. The decree must be allowed to be executed, and unless an extraordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms so that the earlier decree is not stifled.'

In another case of *Fulchand Agarwal v. Atmaram Modi*, ILR (1978) 2 Cut 424, after considering the facts of the case this Court has held that before final disposal of the suit if the petitioner is evicted from the disputed house in execution of the decree against him and ultimately succeeds in the suit, the harassment that would result to him would cause irreparable injury and, therefore, the further proceedings in execution case shall be stayed till the final disposal of the suit. The two decisions of this Court, referred to supra clearly enunciate that whether the provisions of Rule 29 of Order 21, Civil P.C., will be invoked to stay the execution of a decree or not would depend upon the facts and circumstances of each case

and no hard and fast rule can be laid down. But as has been held in Judhistir's case, AIR 1969 Orissa 233 a rigorous test has to be applied to find out whether any exceptional case is made out in the subsequent suit which would prima facie indicate that the suit in all probability is likely to succeed. Even applying the aforesaid test to the present case, I am not in a position to agree with the learned counsel for the petitioner that an exceptional case has been made out so as to get the extraordinary relief of stay of further proceedings in the execution case. So on merits also, the present case does not entitle invoking jurisdiction under Rule 29 Order 21, Civil P.C. If the plaintiff has failed to make out a case so as to invoke the jurisdiction under Order 21, Rule 29 of the Civil P.C. on merits, the question of the Court exercising its inherent jurisdiction under Section 151, Civil P.C. does not arise.

6. In the net result, therefore, there is no merit in this revision which is accordingly dismissed. The interim order stands vacated. There will, however, be no order as to costs.