

Bashir and ors. Vs. Zamir-ul-dIn and ors.

Bashir and ors. Vs. Zamir-ul-dIn and ors.

SooperKanoon Citation : sooperkanoon.com/624969

Court : Punjab and Haryana

Decided On : Nov-06-1992

Reported in : (1993)103PLR533

Judge : Jawahar Lal Gupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 144 and 151

Appeal No. : Regular Second Appeal No. 1067 of 1990

Appellant : Bashir and ors.

Respondent : Zamir-ul-dIn and ors.

Advocate for Def. : H.L. Sibal, Sr. Adv. and; R.S. Rai, Adv.

Advocate for Pet/Ap. : H.S. Riar and; Amarjit Markan, Advs.

Disposition : Appeal dismissed

Judgement :

ORDER

Jawahar Lal Gupta, J.

1. The dispute in this case relates to the restitution of possession of land measuring 9 bighas 4 biswas A few facts may be noticed.

2. On December 2, 1983, Ibrahim gave a loan of Rs. 20,500/- to Zamir-ul-Din. He executed a pronote and agreed to pay interest at the rate of 12 percent per annum. It is claimed that possession of land was given to Ibrahim which was to be adjusted towards the interest accruing on the amount of Rs. 20,500/-. On April 29, 1988, Ibrahim died. The appellants filed a suit for recovery of Rs. 20,500/- as also for an injunction restraining Zamir-ul-Din from dispossessing them from the land in dispute. While the suit was pending an application was filed by the defendant-respondents on July 28, 1988 agreeing to pay the amount along with interest in case the plaintiff Bashir etc sons of Ibrahim agreed to hand over vacant possession of the land. The matter was considered by the learned Subordinate Judge on August 9, 1988 who passed the following order:--

'File taken upon request of the applicant. The applicant wants to deposit the amount found due against him in case the plaintiffs give up their possession and hand it over to the applicant. Notice of the application was given to the plaintiffs. Learned counsel for the plaintiffs has stated at bar that on taking the amount Rs. 24,717/- was due, in case the applicants deposit the same in the Court, possession will be handed over immediately and on handing over possession, the plaintiffs will be entitled to receive the amount. Therefore, applicant is ordered to deposit the amount of Rs. 24,717/- as per his request'.

3. It appears that in pursuance to the order, the requisite amount of Rs. 24,717/- was deposited by the defendant-respondents on the same day. After having made the deposit, Zamir-ul-Din moved an application on August 16, 1988 for possession of land. In pursuance to this application, actual possession was delivered to him on December 12, 1988. In the meantime, on September 21, 1988, the plaintiff appellants got their suit dismissed in default.

4. After the possession had been delivered to the defendant-respondents on December 12, 1988, the plaintiff appellants moved an application under section 144 C. P. C. for restitution of possession on December 20, 1988. Notice of this application was given to the defendant-respondents. After hearing counsel for the parties, the learned trial Court by its order dated April 12, 1988 ordered the restitution of possession.

5. Aggrieved by the order dated April 12,1988, the defendant-respondents filed an appeal before the District Judge. The appeal having been allowed, the plaintiff-appellants have come up in this second appeal to this Court.

6. Mr. H. S. Riar, the learned counsel appearing for the appellants contends that the lower appellate Court has grossly erred in reversing the order of the learned trial Court. The learned counsel submits that there was no compromise executed by the parties in writing. The learned counsel who appeared before the trial Court did not have the authority to make the statement he actually made and in any case, no order could have been passed to the prejudice of appellants 4 and 5, who were minors, without the permission of the Court. He further submits that there being no decree, the defendant-respondents could not have been given possession of the land by the learned trial Court in December 1988. In this situation, the learned counsel contends that the plaintiff appellants are entitled to the restitution of possession in view of the provisions of section 151 of the Code of Civil Procedure.

7. On the other hand, Mr. H. L. Sibal, the learned counsel appearing for the defendant-respondents contends that on the faith of the offer made by the counsel for the appellant, the defendant-respondents had suffered a decree, deposited the amount and thus rightly got the possession of the land. The provisions of section 144 are not even remotely attracted and that in any case, the appellants were not entitled to invoke the provisions of section 151 of the Code of Civil Procedure especially when they are going back on their undertaking. According to the learned counsel, they are estopped from challenging a consent order passed by the Court.

8. A perusal of the sequence of events shows that the appellants had filed a suit for the recovery of the money given by them as loan to Zamir-Ul-Din. They also prayed for an injunction restraining the defendant-respondents from interfering in their possession. While the suit was pending, the defendant-respondents agreed to pay not only the principal amount but also the interest thereon in case the plaintiff-appellants handed over possession of the land immediately. This offer was accepted by the learned counsel for the appellants. As a result, the learned trial Court ordered the defendant-respondents to deposit the amount of Rs. 24,717/-.

The respondents deposited not only this amount but also an amount of Rs. 1600/- as compensation for the standing crops in the suit land on December 14, 1988. As a result, possession was handed over to them on December 12, 1988. Neither the order of the learned trial Court directing the deposit of the amount and recording the undertaking given by the plaintiff-appellants nor the order passed by the executing Court for handing over the possession of the suit land was challenged by the appellants in any proceedings. Instead, they moved an application under section 144 of the Code of Civil Procedure for restitution of possession. The learned lower appellate Court has rightly held that the provisions of section 144 have no application in the circumstances of the present case. It is only when a decree or an order is vitiated or reversed in an appeal, revision or other proceedings or is otherwise set aside or modified in any suit instituted for the purpose, that the Court can on the application of a party entitled to any benefit, order the restitution of that benefit to the party. Nothing of the sort had happened in the present case. Accordingly, the provisions of section 144 had no application. The petition given by the appellants was wholly incompetent and no fault can be found with the order of the learned lower appellate Court.

9. Mr. Riar was at pains to point out that there was no written compromise. The order operated to the prejudice of the minors and in the absence of the decree the question of handing over a possession by way of execution could not have arisen. He has relied on decisions in *Gurpreet Singh v. Chatar Bhuj Goel*, (1988-2) 94 P. L. R. 365 (S. C.), and in *Sumer v. Vijay Singh*, 1990 P. L. J. 68, to contend that a compromise has to be in writing.

10. There is no quarrel with the proposition of law enunciated in these decisions. However, the only question is as to whether or not these matters can be gone into in an application under section 144, C. P. C. All these matters agitated by the learned counsel would need appreciation of evidence and determination of facts. This cannot be done in summary proceedings in a petition under section 144. Even otherwise, no evidence whatsoever was led to prove any of the assertions. Even the record of the learned trial Court in the suit instituted by the plaintiff appellants which led to the passing of the order dated August 9, 1988 or the order dated December 12, 1988 by which possession was delivered to the respondents,

is available with this appeal. In such a situation, it is not possible for me to hold that the lower appellate Court has committed any error of jurisdiction so as to call for an interference in second appeal.

11. Even the provisions of section 151 C. P. C. cannot be invoked in the present case. The plaintiff appellants had admittedly given an undertaking to the Court that in case, money was deposited they would hand over possession and they would withdraw the money only after the possession had been delivered. The categorical statement made by the learned counsel has been recorded by the Court in its order dated August 9, 1988. On the faith of that order, the defendant-respondents actually deposited the money in Court. Now the plaintiff appellants had decided to go back on their undertaking. A person who resiles from his undertaking cannot complain of injustice. No case for invoking the provisions of section 151 is clearly made out.

12. Mr. Riar relies on the decisions in *Manohar Lal Gupta v. Bahadur Rao Raja Seth Hiralal*, A. I. R. 1962 S. C. 527, *Jang Singh v. Brij Lal*, A. I. R. 1966 S. C. 1631, and in *Kavita Trehan v. M/s. Balsara Hygiene Products Ltd.*, A. I. R. 1992 Delhi 92, to contend that the power under section 151 C. P. C. is very wide and should be invoked to undo injustice wherever it occurs.

13. I am not satisfied that any injustice has been caused to the appellants especially when on their undertaking the defendant-respondents had deposited the money and they themselves had chosen to go back on their word,

14. It also deserves notice that after taking over possession on December 12, 1988, respondent, Zamir-UI-Din sold the land to Mohd. Rafiq etc. on January 9, 1989. Rights of a third party have intervened.

15. Accordingly, there is no merit in this appeal. It is dismissed. In the circumstances of the case, the parties are left to bear their own costs.