

Mahabir Pershad Vs. Delhi Traders Private Ltd. and ors.

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Court : Delhi

Decided On : Apr-05-1976

Reported in : AIR1977Delhi45; 1976RLR436

Judge : B.C. Misra, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rules 35, 97 and 100

Appeal No. : Civil Revn. No. 473 of 1969

Appellant : Mahabir Pershad

Respondent : Delhi Traders Private Ltd. and ors.

Advocate for Def. : M.M. Kalra, Adv.

Advocate for Pet/Ap. : R.L. Kohli, Adv

Judgement :

ORDER

1. This revision petition has been filed under Section 115 of the Code of Civil Procedure by the decree-holder against the order of the court below dated 22nd January, 1969, by which the court has allowed the objection of respondents 3 to 11 against delivery of possession.

2. The material facts of the case are that the decree-holder petitioner before me on 29th September, 1966, obtained a decree for possession of the land in dispute

from respondents Nos. 1 and 2, who were judgment-debtors. The decree holder then made an application for execution of the decree and issuance of warrant of possession. In this application he mentioned that respondents 3 to 11 were holding the property on behalf of the judgment-debtors and were, therefore, bound by the decree for possession. The execution court issued, notices to the said respondents, who raised objections that they were not holding possession on behalf of the judgment debtors and so were not bound by the decree and were not liable to dispossession in execution of the decree. These objections of respondents 3 to 11 have prevailed with the Court below and the execution application of the petitioner has been dismissed.

3. Mr. Kohli, counsel for the petitioner, submits that the court below ought not to have entertained the objections of the objectors and it ought to have issued a warrant for delivery of possession and then on being apprised of the resistance by the objectors or complaint by the decree-holder ought to have initiated proceedings to decide the question of the objectors being bound by the decree. Mr. Kohli also submits that the findings of the court below that the objectors were in possession of the property prior to the institution of the suit and so were not bound by the decree, are contrary to the weight of evidence on record and the provisions of law applicable to the case.

4. The scheme of the Code of Civil Procedure (herein referred to as the 'Code') is that on an application for execution of the decree being filed, if the application is otherwise in order, a warrant for delivery of possession is ordinarily issued and if in execution of the decree somebody offers resistance to delivery of possession, then the decree-holder (or in an appropriate case the auction-purchaser) is entitled to make an application to the court complaining of the resistance or obstruction under Rule 97 of Order 21 of the Code. The right of the objector is to resist the execution of the decree. This resistance need not be made necessarily by force, but may be made by assertion of his will in writing, as has been noticed in *Bhagwat Narayan Dwivedi v. Kasturi*, : AIR 1974 MP26 . When the decree has been objected to, then the decree-holder may complain of such resistance or obstruction, which has to be enquired into under sub-rule (2) of Rule 97, or the court may otherwise have to consider whether the objector is bound by the decree.

Under Rule 98, if the court is satisfied that the resistance or obstruction has been occasioned without any just cause by the judgment-debtor or by some other person at his instigation, the court enforces its warrant for delivery of possession and also commits the judgment-debtor or any other person acting on his instigation to be, detained in civil prison up to thirty days. On the other hand, if the court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the court is required by Rule 99 to make an order dismissing the application of the decree-holder. These provisions of law do not strictly envisage a formal objection application by the objector to be filed in court, but usually and in practice it is normally done to bring the case of the objector to the notice of the court, so that the decree-holder does not indulge in abuse of the- process of the Court to dispossess somebody not bound by the decree.

5. However, under Rule 100 if a person other than the judgment-debtor is dispossessed then such a person is entitled to make an complaining of dispossession. This is enquired into under sub-rule, (2) of Rule 100. If the Court is satisfied that the applicant was in possession of the property on his own account or on account of, some person other than the judgment-debtor, then the Court under Rule 101 orders restoration of the possession to the person so dispossessed. Rule 103 provides that any party not being a judgment-debtor against whom an order is made under Rule 98, Rule 99 or Rule 101 may institute a suit to establish the right which he claims to the present possession of the property, but otherwise such an order shall be conclusive.

6. In the instant case, the decree holder himself stated in the execution application that the respondents 3 to 11 were bound by the decree, although their names did not appear in the decree and as such the decree-holder himself invited the investigation into the matter and the recording of a finding on the subject The court, in my opinion, was right in issuing the notices to the respondents 3 and 11 and enquiring into the matter for arriving at the conclusion it has done. The application of the decree-holder on the subject may be treated as an application under Rule 97 of Order 21 of the Code, although it is described as an application

under Order 21, Rule 35. At all events the decree-holder cannot be allowed to complain about the act of the court in investigating the matter, which he had himself brought to the notice of the court and invited the court to adjudicate upon. The decree-holder in the circumstances of the case, cannot be heard to say that the court ought to have granted his application for issuance of warrant for possession against not only the judgment debtors, but also respondents 3 to 11 and then dispossessing the said respondents expect them to come to the court and complain under Rule 100. This would really be an abuse of the- process of the court and so the grievance of the decree holder is really misplaced and has, no substance. The contention of Mr. Kohli is thereforee, rejected.

7. The findings arrived at by the court below in the case do not, call for review in exercise of revisional jurisdiction of the court and nothing in this order will amount to an expression of opinion on the merits of the case. The impugned order of the court is, thereforee, construed as an order passed by the court below under Rule 99 of Order 21 of the Code. As such, Rule 103 entitles the decree holder to institute a suit to establish his right which he claims to the present property. The decree-holder was, thereforee, in error in filing this revision and not instituting a suit as required by law. Mr. Kohli now states that he will institute a suit as required by Rule 103 or take other appropriate steps in the matter. The counsel for the contesting respondents submits that the suit of the petitioner will be barred by time, but Mr. Kohli submits that this question be left open in this case. It will be decided in the suit if and when the same be instituted.

8. Consequently, I do not find any merit in the revision and dismiss the same. But, nothing herein contained will amount to an expression of opinion on the merits, which may prejudice the parties in a suit that may be instituted hereafter. The parties are left to bear their respective costs.

9. Appeal dismissed.