

Subodh Kumar and ors. Vs. Satya Swarup Singh Bhatti and anr.

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Court : Delhi

Decided On : Dec-03-1986

Reported in : 32(1987)DLT212

Judge : T.P.S. Chawla and; Y.K. Sabharwal, JJ.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 21, Rule 97

Appeal No. : Letter Patent Appeal No. 174 of 1983

Appellant : Subodh Kumar and ors.

Respondent : Satya Swarup Singh Bhatti and anr.

Advocate for Pet/Ap. : O.N. Vohra, Adv

Judgement :

Y.K. Sabharwal, J.

(1) In this Letters Patent Appeal, the challenge is to the correctness of the judgment of the learned single Judge of this Court, who had dismissed the appellant's execution first appeal and had upheld the order of the executing court dismissing the objection filed by the appellant under Order 21, Rule 97 and Section 151 of the Code of Civil Procedure.

(2) The litigation from which this appeal arises appears to have a chequered history. The decree which is now sought to be executed was passed in the year 1976 and litigation has thereafter been pending between the parties for the last about ten years and the relevant facts are as follows.

(3) The appellants in this appeal are sons of Smt. Sudarshan Kumari wife of Shri Behari Lal Sharma (respondent No. 2). Smt Sudarshan Kumari entered into an agreement to sell the property No. M-48, Kalkaji, New Delhi, to Sh. Satya Swarup Singh Bhatti (Respondent No. 1) vide agreement dated 26/04/1970 which was also signed by Shri Behari Lal Sharma, husband of respondent No. 2 and father of the appellants. A supplementary agreement dated 19.6.1970 was also entered into between respondent No. 1 and respondent No. 2, and under this agreement some more amount was paid by respondent No. 1 to respondent No. 2. In January 1972 respondent No. 1 filed a suit for specific performance against respondent No. 2. The suit was decreed by the Commercial Sub Judge Delhi on 3/08/1976. A Regular First Appeal (RFA 315/76) filed by respondent No. 2 was dismissed by this Court on 22/05/1980. It appears that permission was granted by the competent authority for sale of the property in question to respondent No. 1, decree-holder. Respondent No. 2 filed objections challenging the validity of the sale permission. The said objections were filed on or about 10/10/1980. The said objections were dismissed by the trial court on 1.4.1981. Against the order dated 1.4.1981, the J.D. respondent No. 2 filed an Execution First Appeal No. 3/81 in this court. It further appears that along with this execution First Appeal, an application was filed seeking stay of the operation of the order of the trial court dated 1/04/1981, and stay of further proceedings before the trial court. The said application

was supported by an affidavit of Shri Subodh Kumar who is one of the appellants before us. The said appeal (EFA 3/81) was dismissed by a learned single Judge of this court on 2 , April 1981.

(4) Respondent No. 2 took the matter to the Supreme Court by filing two Special Leave Petitions, one challenging the dismissal of Rfa 315/78 and other challenging the dismissal of Efa 3/81. Both the Special Leave Petitions were dismissed by the Supreme Court on 25/09/1981. Respondent No. 2 filed two review petitions for the review of the orders dated 25/09/1981. The said review petitions were also dismissed by the Supreme Court on 16/03/1982.

(5) After the aforesaid protracted litigation, a sale deed in respect of the property in question was executed and registered in favor of respondent No. 1 on 14/10/1982.

(6) The matter, however, did not rest with the execution and registration of the sale deed. On 12/11/1982 one Yadav Chander Sharma filed objections to the execution. The said objections were dismissed on 23/04/1983. Shri Sharma filed Civil Revision 660/83 challenging the dismissal of his objections. The said Civil Revision was dismissed by a learned single Judge of this court on 4/08/1983. The said Shri Yadav Chander Sharma, it appear, filed a suit on or about 18/10/1982 for permanent injunction restraining respondent No. 2 from executing the warrant of possession. Along with the suit, an application for grant of an ad interim injunction was also filed. The application for grant of an ad interim injunction was dismissed by the trial court on 19/09/1983. The appeal against the order dated 19/09/1983 was dismissed by the Senior Sub Judge, Delhi, on 8/11/1983. It was thereafter that the objections were filed by three sons of the judgment debtor on or about 10/11/1983, which were also dismissed by the trial court on 17/11/1983. The order of the trial court was upheld by a single Judge of this court, and the Execution First Appeal filed by the appellants was dismissed in limine on 30/11/1983. The correctness of the judgment dated 30/11/1983 is under challenge in this appeal.

(7) The appellants had filed objections under Order 21, Rule 97, Code of Civil Procedure. In our view the provisions of Order 21, Rule 97 of the Code of Civil Procedure are clear and under the said provision, it is only the decree holder who can move the executing court. It is well settled that a third party resisting the execution has no locus standi to claim investigation by the executing court into his alleged right or title prior to his dispossession as Order 21 Civil Procedure Code did not contemplate any such enquiry at the instance of a third party either under Rule 35 and 36 or Rules 95 and 96. The remedy of such a third party under Order 21 is only after dispossession under Order 21 Rule 100 Civil Procedure Code. The provision of Order 21 Rule 97 is enabling provision for the benefit of the decree-holder only. The learned trial court rightly held that the application of a third party under Order 21 Rule 97 is not maintainable.

(8) SHRI. O.N. Vohra, learned counsel for the appellants, after some arguments, conceded that the judgment of the execution court as also of learned single Judge of this court is correct to the extent that the appellants could not invoke the provisions of Order 21 Rule 97 Civil Procedure Code and the objections were rightly dismissed. He, however contended that while rightly dismissing the objections, the trial court and the learned single Judge should not have made observations on the merits, in particular, the objection that the objections were dishonest and frivolous. We do not agree with this contention. The history of the litigation shows that in case the contention of the counsel for the appellants is accepted, this would defeat the ends of justice instead of subserving the same. In our view the observations that the objections were dishonest and frivolous were rightly made by the trial court and the learned single Judge of this court. Keeping in view the history of the litigation the Courts were perfectly justified in expressing the prima facie view that the objections were being put forth to delay the execution and were dishonest and frivolous. As stated above, the objectors are the sons of the judgment debtor. Their mother had been claiming, right up to the Supreme Court, that she was in sole and exclusive possession of the property in dispute. One of the appellants had filed an affidavit in support of the appeal filed by respondent No. 2 acting for and on her behalf. Admittedly, the appellants are living with judgment debtor-respondent No. 2 in the property in question. The objections were filed two days after the dismissal of the appeal filed by Shri Y.C.Sharma. The appellants did not claim any interest in the property till before filing the objections in the year 1983, although the litigation commenced in the year 1972. In the

background of these facts the Court was fully justified in holding the objections as dishonest and frivolous.

(9) We find no merit in this appeal, and the same is consequently dismissed with costs, which we quantify at Rs. 1,000.00.

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