

Rishi Ram Vs. Kapoori Devi Etc.

Rishi Ram Vs. Kapoori Devi Etc.

SooperKanoon Citation : sooperkanoon.com/685421

Court : Delhi

Decided On : Feb-12-1985

Reported in : 1985RLR310

Judge : D.R. Khanna, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 148

Appeal No. : Civil Revision Appeal No. 126 of 1982

Appellant : Rishi Ram

Respondent : Kapoori Devi Etc.

Advocate for Pet/Ap. : Y.K. Sabharwal,; Mukul Rohatagi,; S.L. Bhatia,;

Judgement :

D.R. Khanna, J.

(1) One Chhoteylal and his firm were proceeded for insolvency and suit property was sold in Court auction to Respdt. 1 Chhoteylal's 3 sons presented objections. Later on petitioner withdrew from it and filed a separate suit. Their objections were that property was ancestral in which Chhoteylal had 1/6th share. Petitioner in his suit was denied interim Rishi Ram v. Kapoori Devi etc. injunction. Parties agreed to refer their disputes to arbitrators. Latter's award was filed in Insolvency Court. Parties agreed not to object. The 3 sons (including petitioner) paid major amount

but defaulted about las. payment with the result that Respdt. 1 became entitled to possession. She applied for it. Petitioner asked for revival of his suit alleging that award was neither filed nor made rule of the court and was not binding on him. During proceedings, for purposes of stay, Adj allowed the sons to deposit balance. Ultimately order was against petitioner and he approached High Court. After detailing above, judgment proceeds :-]

(2) With this background of the facts I have heard the parties's counsel and given my utmost consideration to the entire circumstances. There can be no dispute that it were the rights, title and interest of Chhotey Lal and the concern Chhotey Lal Laxman Dass which were put to auction by the official liquidator and purchased by Smt. Kapoori Devi. In case Chhotey Lal was the sole owner of this property as well as that business, Kapoori Devi acquired absolute title over this property as a result of that sale. In that case Chhotey Lal's sons cannot assert any interest in this property. However, in case this property was ancestral property in the hands of Chhotey Lal or that it belonged to his joint Hindu family constituting of himself, his sons and his wife, then Kapoori Devi acquired no larger title than what Chhotey Lal had in this property. The same ex-facie would appear to be 1/6th share. The Insolvency Judge while adjudging Chhotey Lal as insolvent had recognised that there existed a joint Hindu family between them and the same had disrupted in status and not by metes and bounds. It was also noted that there was ancestral property though the same was not specified and whether it had reference to the property in dispute. Chhotey Lal's sons have throughout been asserting that this property was their ancestral and joint Hindu family property in which they to had share. This case was subject matter of the objections that they had moved before the Insolvency court under Section 4 as well as of the suit No. 338/61 before Mr. Trilochan Singh, Sub-Judge. In none of these proceedings this case was adjudicated by the courts. In the insolvency proceedings the sons were directed to hand over possession when they had failed to abide by the term of the interim stay granted viz. deposit of Rs. 25.00 p.m. The suit too did not reach the stage of finality as it was adjourned sine die after the reference of disputes to arbitration and its revival later was declined. The interim stay against delivery of possession had been refused by Mr. Trilochan Singh, Sub-Judge and it had been declined in two earlier suits brought by some of the children of the sons of Chhotey Lal.

(3) It appears that the claim of Chhotey Lal's sons about the ancestral and joint Hindu family nature of the the property did call for consideration and it was as such that arbitration was directed, both in the appeal pending before the S.S.J. in suit No. 338/61, and the objection petition before the Insolvency Judge. The claim of the sons was not treated as deserving outright rejection but called for adjudication. The arbitrators without expressly giving any finding about the nature of the property or the shares if any which Chhotey Lal's sons had in the same adopted a more equitable approach in allowing the sons to take back the property on refund of the consideration which Kapoori Devi had paid and a further amount of Rs. 1,500.00 as compensation to her. On their doing so the property was to be transferred in favor of Laxman Dass who according to the petitioner was the eldest of them and was representing them. The circumstance that other brothers of Laxman Dass had also been paying Installments in a way reflects that the transfer back to Laxman Dass was meant to be for the benefit of all. Unfortunately Rs. 13,500.00 only could be paid by these brothers within the time prescribed by the award and there was a default in the payment of Rs. 4,000.00; though they had asserted that Rs. 500.00 only was left due. This assertion has, however, been negated by the courts. In the circumstances, the right of Kapoori Devi to take possession of the property as auction purchaser was upheld. Whether the sons of Chhotey Lal were prevented from depositing Rs. 4000.00 in time at that stage or Rs. 25.00 per month as earlier directed in suit No. 338/61 out of poverty is difficult to say. In case they deliberately did so to harass the auction purchaser, then both the sides have paid a heavy price thereof in the net work of long litigations, 1985. Rajdhani Law Reporter 310 The fact remains that the courts have held that there was a default in the payment of Rs. 4,000.00 in time, and, therefore, Kapoori Devi was entitled to take possession of the property. At the same time, it is also clear that these Rs. 4000.00 were subsequently deposited in terms of the order of Mr. J.D. Jain on or before 6.10.1971 when the sons of Chhotey Lal had filed an appeal against the order of the In solvency Judge Mr. S.R. Goel, that the default having taken place the possession should be delivered to Kapoori Devi. That order was made as an interim measure when stay against the delivery of possession was sought during the pendency of the appeal. Ultimately, however, the appeal was dismissed by Mr. Jaspal Singh The amount of Rs. 13,500.00 so far has

remained with Kapoori Devi while Rs. 4,000.00 are lying in the court. Another amount of Rs. 500.00 was deposited on 17.8.1965.

(4) The award delivered by three arbitrators was filed in the Insolvency Court. No specific order of its being made a rule of the court was passed, nor a decree in terms thereof followed. However, there is little doubt from the entirety of circumstances that the court directed effect being given to this award and the parties too abided by the same. Rishi Ram of course was not party in the objection proceedings before the Insolvency court at that stage as he had earlier withdrawn himself from the objections. In the suit No. 338/61 this award had not been filed, but as the facts discussed above show, Rishi . Ram has been accepting the award and acting on it. It seems that he reconciled to the submerging of his joint Hindu family rights qua the ancestral property, if any, to the broad equitable relief granted by the arbitrators, and, therefore, acted in a manner as to leave no misgivings that he was abiding by the same. He cannot, therefore, be now heard to seek the reopening of the entire validity of the award on the ground that it had not been filed in the suit in which he was a party, and was prevented from filing objections to the same. The award must hold the field.

(5) It is next to be considered whether that award should be now given a total go-by on the ground that the sons of Chhotey Lal could not deposit Rs. 4,000.00 under the same within time. It more appears to be a case of poverty in the family. Firstly they could not deposit paltry Rs. 25.00 p.m. towards the use and occupation of the property or rent when initially stay was granted. That shows to what extent the family had fallen to financial crisis. This was apart from their father suffering insolvency. The award which was highly equitable, provided them another opportunity to take back the property, but again the poverty seems to have stood in the way. and there occurred the default of Rs.4,000.00. These Rs. 4,000.00 now already stand deposited in terms of the order of Mr.J.D.Jain, Additional District Judge under the aforesaid interim stay order. The crucial question to be considered is whether the family should be made to suffer for good their only residential house because of their then acute poverty and thrown out because of the technical default in time factor. In this regard, there is another hurdle of the decision given by Mr.S.R. Goel and Mr. Jaspal Singh in the litigations in which

Rishi Ram was as well a party. I will discuss its effect later.

(6) At the same time it cannot be ignored that Kapoori Devi who purchased this property in an auction by the Official Liquidator, and he was acting as such on behest of the court, has not received peace ever since 1956. She paid Rs. 15,000.00 for this purchase, and the possession of the property has been all through eluding. She has suffered for no fault of her. The value of the property must have increased many times now, and naturally to deprive her at this stage would be highly inequitable to her as well. She had been made to undergo a spate of litigations, and must have spent large amounts. The question is should she now be deprived of the fruits of that purchase and the success that she has got in all those litigations apart from the hurdles and the delays that the sons of Chhotey Lal enacted.

(7) These are, therefore, difficult considerations. Both the sides have equities, the one of being thrown in helpless position on account of poverty, and the other of having volunteered to give bid in a court auction through the Official Liquidator. There was earlier some doubt as to the applicability of rule of constructive rest judicata in execution proceedings but now by Explanation VII. Rishi Ram v. Kapoori Devi etc. introduced in 1976 the same has been expressly made applicable. General principles of rest judicata in any case were always applicable.

(8) As already noted above, the award was more based upon the equitable approach of allowing the sons of Chhotey Lal to retrieve the property on payment of the price which the auction purchaser had paid apart from Rs. 1500.00 as compensation. The same could not be essentially treated as recognition of the sons' claim of being entitled to shares in this ancestral property as of right.

(9) In the proceedings before Mr. S.R. Goel and Mr. Jaspal Singh, the controversy related to whether Rs. 4,000.00 had been paid by Chhotey Lal's sons within time in terms of the award. They had mentioned a short-fall of Rs. 500.00 only which too were deposited before the last date for the payment of the third Installment under the award viz. 18.8.1965. The question of allowance of extension of time to permit the defaulters to pay the amount of Rs. 4,000.00 did not come up for consideration nor Chhotey Lal's sons sought any relief in this direction, presumably as it would

have been inconsistent with their plea of having already paid the same. In any case, these Rs. 4,000.00 were deposited in terms of the appellate court's order as an interim measure, and within the time allowed. This was in 1970 and is still lying in court. The validity of the award or the effect of non-passing of a decree on its basis also did not come up for adjudication in those proceedings, though, of course, in the impugned orders the courts below have observed that these could be agitated, and on this scope the principle of constructive res judicata is attracted. From the side of the sons of Chhotey Lal, however, it is urged that in case Smt. Kapoori Devi presses to take advantage of this technical provision, they should as well as not be precluded from taking similar technical defense that the award was not made a rule of the court, nor decree followed thereon. Rather Rishi Ram states that the award having not been filed in suit No. 338/61 he could not even file objections to the same. It is, therefore, urged that in case he and his other brothers are being shut out from raising objections to the award on the ground that they had acted under it, the question of condensation of delay in the deposit of Rs. 4,000.00 be now considered. This, it is urged, is a vital matter which may otherwise result in ruin of the family by their being thrown on the streets from the house in which they have lived for generations.

(10) Section 148 Civil Procedure Code permits the court in its discretion to enlarge the period from time to time which it had fixed or granted for doing any act prescribed or allowed by the Code. The period of payment in the present case, however, was not the result of any order made under the Code, but was in terms of the award. This provision, therefore, is not strictly applicable. However, in special hard cases the court can still give the chance of locus paenitentiae on terms. This discretion can all the more be invoked where the default was not willful. Rather the facts bring out that Chhotey Lal's sons did intend to abide by the award when they paid Rs. 13,500.00 under the same to the auction purchaser. The other amount too was later deposited. The circumstances of the non-deposit of the balance have already been discussed above, and the hardship that is likely to result. In this overall situation the end of justice would be well met if not only the amount of Rs. 4,500.00 which is lying deposited by Chhotey Lal's sons in court are paid to Kapoori Devi, but these persons are further required to compensate her with an additional amount of Rs. 5,000.00 which should somewhat cover the

interest which she has lost for all this period. In case this additional amount of Rs. 5,000.00 is deposited by Chhotey Lal's descendants within one month, they will not be dispossessed from the property in dispute. In that case Kapoori Devi will be entitled to withdraw these Rs. 5,000.00 as well as Rs. 4,500.00 which have already been deposited. Their particulars will be furnished by Chhotey Lal's sons to Kapoori Devi so as to enable her to withdraw them. If that amount of Rs. 4,500.00 is not, made available to Kapoori Devi they will pay the same to Kapoori Devi along with the said Rs. 5,000.00 within a month and themselves withdraw the earlier deposits from the Court. Kapoori Devi will then execute a sale-deed in favor of Chhotey Lal's sons as well as the children of Laxman Dass who has in the meanwhile died. The expenses of this sale-deed will be borne by 1985. Raj. L.R 317 them and not by Kapoori Devi. If, however, these Rs. 5,000.00 are not deposited for payment to Kapoori Devi within one month, the objections of Rishi Ram and the descendants of Chhotey Lal would be treated as over-ruled and rejected, and warrant of possession issued for delivery of possession of the property to Kapoori Devi.' In that case she will refund Rs. 12,000.00 to Chhotey Lal's descendants who will further be entitled to take back Rs. 4,500.00 from the court.