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Haseeba Khatoon (Deceased) Thr. Lrs. Vs. Rafiq and anr.

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SooperKanoon Citation : sooperkanoon.com/698627

Court : Delhi

Decided On : May-20-2005

Reported in : 124(2005)DLT390; 2005(82)DRJ628

Judge : Mukul Mudgal, J.

Acts : Code of Civil Procedure (CPC) - Sections 151 - Order 40, Rule 4 - Order 41, Rule 4; [Constitution of India](#) - Article 227

Appeal No. : CM(M) 1715/2004 and CM 15708/2004

Appellant : Haseeba Khatoon (Deceased) Thr. Lrs.

Respondent : Rafiq and anr.

Advocate for Def. : Ram Kishan Saini, Adv.

Advocate for Pet/Ap. : V.B. Andley, Senior Adv. and; Rajinder Mathur, Adv

Disposition : Petition dismissed

Judgement :

Mukul Mudgal, J.

1. This petition under Article 227 of the [Constitution of India](#) challenges the Order dated 24th December, 2002(Annexure P-15) passed in RCA.No.13/2001 by the Additional District Judge, Delhi(hereinafter referred to as the `Article 227')

dismissing the petitioner's application under Order XL Rule 4 Code of Civil Procedure (hereinafter referred to as the `CPC') for staying the dispossession of the petitioner from the suit premises in execution case No. 42/1995 (M-17/2002) titled 'Mohd. Rafiq v. Rustam Kan' pending in the Court of Civil Judge, Delhi.

2. The facts of the case as stated in brief are :-

(a) on 14th November, 1975 Suit No.301/74 for declaration of the petitioner's mother, Salloo Khatoon's title on the basis of the agreement to sell dated 8.10.70 was dismissed as withdrawn and compromised with Rustam Khan. Though Mohd. Rafiq was not a party to the suit nor bound by this judgment.

(b) Suit No.196/77 was filed by Mohd. Rafiq against Rustam Khan(husband of petitioner No.1) for possession of the suit property where the petitioner appeared as a witness supporting her husband's case and this suit was decreed on 31st October, 1984 holding inter alias that possession was given to Rustam Khan and not Salloo Khatoon.

(c) on 24th July, 1984 the first appeal against the judgment dated 31st October, 1984 dismissed and on 25th November, 1986 the regular second appeal No.95/86 was also dismissed by this Court.

(d) In the meanwhile on 21st March, 1986 Haseeba Khatoon the present petitioner filed another suit No.148/86 against Md. Rafiq claiming ownership by adverse possession where no interim injunction was granted and on 18th November, 1987 the suit was dismissed as withdrawn.

(e) on 24th April, 1989 the objections filed by the petitioner on 11th February, 1987 against the execution of decree in Suit No.196/77 were dismissed by the learned Sub Judge. This order dated 24th April, 1989 was upheld by the learned ADJ by its judgment dated 28th May, 1989 and the order of the ADJ was upheld by the dismissal of the Civil Revision Petition, C.R.No.401/1992 by this Court on 6th March, 1995 and on 11th July, 1995 the special leave petition against the above order of this Court dated 6th March, 1995 was dismissed by the Hon'ble Supreme Court.

(f) The present suit No.582/97 filed for specific performance, adverse possession e.g., was dismissed on 28th September, 2001 by the Civil Judge. First appeal, RSA 13/2001 was filed against the judgment and in the said appeal the interim relief application under Order XLI Rule 4 CPC was dismissed on 24th December, 2002 and on 8th November, 2004 the Civil Revision No.1381/2002 filed in this Court against the order dated 24th December, 2002 was dismissed as withdrawn by this Court on 8th November, 2004. The present petition under Article 227 of the [Constitution of India](#) challenges the above order dated 24th December, 2002 declining interim relief to the petitioner.

3. This petition under Article 227 is directed against the Order dated 24th December, 2002 dismissing the respondent No.2's application under Order XLI Rule 4 for dismissal of the appeal and under Section 151 CPC for deleting the names of Rustam Khan and Saurab Khan from the array of the respondents as shown in the amended memo of parties filed on 6th May, 2002. Order XLI Rule 4 reads as follows:-

'4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all. - Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favor of all the plaintiffs or defendants, as the case may be.'

4. The Trial Court was of the view that merely because two of LRs of the appellant before it, namely, Rustam Khan and Saurab Khan have neither signed the appeal nor the vakalatnama, it is only an irregularity which can be cured at a later stage and the appeal cannot be dismissed on this ground. It has also been held that since no application was filed to include the name of Rustam Khan and Saurabh Khan in the array of the respondents, their names have rightly been included by the appellant in the amended memo of parties as respondents. Consequently the application filed by the respondents were dismissed. The petitioners have also raised a grievance in this petition and indeed this is the real grievance in this

petition that they should have been granted an interim order staying dispossession and so that they could resist the warrant of possession secured by the respondent' in Execution Case No.42/1995. The matter has been pending in this Court for the last two years and has obviously delayed the disposal of the suit before the ADJ, Delhi. Furthermore the history of the present case eloquently demonstrates that the petitioners have thoroughly abused the process of law to revive claims and pleas which have been rejected right up to the Hon'ble Supreme Court. The petitioners were not entitled to any interim order staying dispossession as this would tantamount to a travesty of justice. Accordingly, there is no merit in this petition under Article 227 of the Constitution and the same deserves to be dismissed with costs quantified at Rs.10,000/- payable to the respondents within eight weeks from today.

5. Consequently the petition is dismissed with costs as indicated above. The interim order dated 10th December, 2004 stands vacated.

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