

Alimuddin Vs. Mohd. Mian and ors.

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Court : Delhi

Decided On : Jan-01-1991

Reported in : 44(1991)DLT453; 1991(21)DRJ77

Judge : Santosh Duggal, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47 - Order 22, Rule 10;
[Delhi Rent Control Act, 1958](#) - Sections 57(2)

Appeal No. : Civil Revision Appeal No. 117 of 1988

Appellant : Alimuddin

Respondent : Mohd. Mian and ors.

Advocate for Pet/Ap. : M. Ahmed,; M.C. Anand and; B.I. Singh, Advs

Judgement :

Santosh Duggal, J.

(1) This case has a chequered history. Respondents 1 to 3. who are the sons of the original decree-holder, deceased Shri Ahmed Ali Khan, are seeking to execute a decree which was passed in favor of their father, for eviction of petitioner's father as far back as on 29th January, 1960. The father and predecessor-in-interest of respondents 1 to 3 had filed a suit for eviction under the provisions of Section 13 of the Delhi & Ajmer Rent Control Act, 1952 (for short 'the Act of 1952'), which

culminated in the aforesaid decree on the ground of his personal requirement and that of his family members dependent on him, which obviously included his sons. The decree, however, could not be executed because under the provisions of Slum Areas (Improvement & Clearance) Act, 1956 (for short 'the Slum Areas Act'), the decree-holder was required to obtain sanction of the competent authority under the said Act for executing the decree in relation to the property situated in a slum area. The property being so situated, the decree-holder late Shri Ahmed Ali Khan had to approach the competent authority for the requisite sanction but that was declined in view of the situation in which the tenant was placed, both economically as well as taking into consideration the members of his family. Even the appeal filed against that order was dismissed with the result that the decree-holder was rendered incapable of executing the decree by virtue of operation of the statute, relating to slum areas.

(2) However, the tenant/judgment-debtor Shri Bashiruddin died in February 1968. Contending that the statutory protection under the Slum Areas Act did not extend to the legal heirs of the tenant, the decree-holder filed a suit for possession in the year 1971 and that suit was decreed on 9th May 1973. The appellant, as one of the sons of the judgment-debtor took that judgment to appeal and the Additional District Judge vide judgment dated 5th April, 1978 at aside the judgment, of the subordinate court holding that the separate suit for possession was not competent and execution of the decree could be sought by the decree-holder because it was a matter of satisfaction, discharge and execution of the decree, and suit was barred.

(3) It may be noted, however, that during the pendency of the suit before the Subordinate Judge, the decree-holder also died, his date of death being 6th April, 1973. His sons who are respondents I to 3, namely, S/Shri Mohd. Mian Mohd. Nabi and Mohd. Wali were brought on record as his legal representatives. It was pursuant to the observation of the Additional District Judge in the appeal decided vide judgment dated 5th April, 1978 that execution was taken out, and the present appeal arises out of that execution.

(4) The execution was sought on the basis of the decree passed on 20th January, 1960 for ejectment of the tenant. All the sons of the deceased judgment debtor were made party to the execution application, as his legal representatives, but out of four sons of the deceased tenant, only the petitioner Alimuddin filed objections against the execution of the decree. The other sons have been impleaded as pro forma respondents in this revision petition and are arrayed as respondents No. 4 to 6. Number of objections were taken by the appellant to the execution of the decree, such as that the decree being for ejectment of a tenant from a property to which Delhi Rent Control Act, 1958, (for short 'the Act of 1958'), applied, the jurisdiction of the court was barred by virtue of the provisions of Section 50 of the said Act. It was also contended that the applicants who had taken out execution had not disclosed the date of death of the decree-holder and the total number of heirs left by him, and that to his knowledge, the deceased decree-holder had also left daughters who had since migrated to Pakistan, and that they were also necessary parties, and that the execution was not competent, on account of non-joinder of all the legal representatives of the deceased decree-holder. It was also added that the interest of the daughters, who have migrated to Pakistan has vested in the Custodian of Enemy Properties, and the present execution cannot be filed without permission from the said Custodian. It was also pleaded that the eviction order was passed in favor of the late Shri Ahmad Ali Khan on the ground of his personal requirement, and that requirement has lapsed on his death, and for that reason also, the decree was not executable. The plea of time bar for the reason that the execution had been sought after 18 years of the passing of the decree was also raised. There were also some objections that the decree was, in fact, in favor of one Mohd. Bisa and was not executable by the sons of late Shri Ahmad Ali Khan.

(5) The executing court after putting these contentions to issues and hearing the parties, dismissed the objection. The plea of execution being barred by limitation was dismissed on the ground that till the tenant remained alive, the decree remained suspended because of the provision of the Slum Areas Act. The right of the sons of the deceased decree-holder to file execution application and execute the decree was held to be maintainable. The contention that the decree was not executable by virtue of provisions of Section 50 of the Act of 1958 was rejected on

the ground that this Act came into force after passing of the decree.

(6) In this revision petition same grounds had been reiterated, as were subject matter of the objections, filed under Section 47 of the CPC.

(7) Mr. Ahmed appearing for the petitioner, however, confined himself to only one objection, and that is right of the sons of late decree holder Ahmed Ali Khan, as his legal representatives, on the ground that it now transpires that the deceased had made an oral gift of his properties, including the property which is subject matter of eviction decree, in January 1971, whereby the total rights, title and interest of the decree-holder in this property and in his other properties were gifted to the sons. He argued that by virtue of this gift, which was subsequently given a final seal by a decree of the court, on 15th October, 1971 in a suit brought by his sons on the basis of the said oral gift deed, and admitted by the father as defendant, and that in face of that situation, the sons of the decree-holder could not execute the decree as bids legal representatives because the decree-holder had ceased to be the owner of the property at the time of his death, and that held no executable interest in the decree in respect of this property.

(8) I have given my careful thought to this argument and I find that the objection, in the form in which has now been set out during hearing of the revision petition, was never taken up at any stage, namely, neither at the time the objections were filed nor at the time of filing of this revision petition. It is not a question of law purely but a question of fact, regarding terms of the gift deed. It is even doubtful whether this plea can be entertained at this stage, but treating as a question of law, in face of the decree dated 15th January, 1971 which is on record of the case, I have heard the parties on this point.

(9) Mr. M.C. Anand as well as Mr. Bharat lader singh, both appearing for respondents 1 to 3, sons of the deceased who have brought the execution as his legal representatives, have submitted that this point is purely academic because the sons of the deceased, whether as donees or as legal representatives are the same persons, and even as donees they would be entitled to continue the proceedings including the execution under the provisions of Order 22 Rule 10 Civil Procedure Code, and to that extent, they will have to be treated as legal

representatives of the deceased being assignees or transferees or donees from him.

(10) Mr Bhart Inder Singh relied upon the provisions of Section 146 Cpc in this respect which lay down that where a person is entitled to take out any proceedings or make an application, then persons claiming under him are entitled to take out those proceedings and make such an application. I find substance in his arguments because the sons of the deceased decree- holder are persons claiming under him in 'her dual capacity, namely, being both his sons as also being donees of the property, which is subject matter of eviction decree, and as such they are persons competent to take out execution of the decree, and the objection, as now , during the hearing of the revision petition, is not sustainable. `

(11) The plea which was taken in the objections to the executability of the decree was in a different perspective, namely, because of the provisions of Section 50 of the Rent Act of 1958 It was contended that the decree cannot be executed unless a valid order is passed under provisions of section 14 of the said Act I agree with the contention of Mr. Ahmed to the effect that the learned Subordinate Judge has erred in saying that this objection was not maintainable for the reason that the decree had been passed before coming into force of the Rent Act of 1958, because to that extent there is error in the Judgment as it is not disputed by the learned counsel for the contesting respondents that the Delhi Rent Control Act came into force on 9th February 1959, whereas the decree was passed on 29th January, 1960. The learned counsel for the respondents have pointed out that the decree shall still be saved by virtue of the provisions of Section. 57(2) of the Rent Act of 1958, which contains provisions as to repeal and savings. In spite of the fact that Delhi & Ajmer Rent Control Act. 1952 stood repealed vide Sub-section (1) of section 57, a non-obstante clause was added in Sub-section (2) to the effect that notwithstanding such repeal, all suits and other proceedings brought under the repealed Act, which were pending at the time of passing of the present Act, would be continued and disposed of in accordance with the provision of the repealed Act. Under that Act, there was no bar to the jurisdiction of a civil court for entertaining eviction petitions, passing decrees and executing the same. In fact, the decree under reference was passed by a Subordinate judge, and is thus protected by the

provisions of Section 57(2) of the Civil Procedure Code Act of 1958. This objection is, therefore, devoid of any merit and has been rejected.

(12) Where as Mr, Ahmed stated categorically at the Bar that he did press any other objection as taken up in the grounds of revision, but he try strenuously argued one point, which is nowhere in the objection petition on grounds of revision, namely, that the decree having been passed in favor of the deceased Shri Ahmed Ali Khan, on the plea of his personal requirement, he having died, that ground becomes non-existent, and that the eviction decree obtained on this ground is not executable at the instance of his legal representatives.

(13) The learned counsel built up his argument by relying on a judgment of the Supreme Court reported as 1981 (2) R C.R. 74, M.M. Quasim v. Manohar Lal Sharma and ors., where it was held that if there are some subsequent events which affect the right of the suitor before the court to carry on the proceedings or get a decree, then that subsequent event should be taken into account even at the stage of second appeal, This was on the reasoning that an appeal is a continuation of the original suit or proceedings and the matter remains open till it is accorded a finality by a decree of the court and which is not subsequently correctable by any judicial proceedings. It was in this context that it was held that any subsequent event which has a bearing on the survival of cause of action, should be taken note of and relief moulded accordingly, when such an event is brought to the notice of the court, during the pendency, of the appeal.

(14) To this, the reply of the learned counsel for the respondents is that there is a vital and basic difference between an appeal which is admittedly a continuation of original proceedings, and that of the stage of execution, when the decree had become final, and that it was settled law that the executing court cannot go behind the decree, on any account. He placed reliance on a Division Bench decision of this Court reported as 1973 R C.R 664, Sita Ram v. Jai Babu where it was clearly laid down that Section 47 of the Civil Procedure Code applied proceedings in execution before the executing court, and such a court was precluded from going behind the decree and determine whether the grounds on which the decree was passed did or did not exist.

(15) It has been rightly argued that the ratio of that judgment shall apply to the present case also, and that there being a final decree in favor of the decree-holder, the right to execute the same will survive in favor of his legal representatives and the executing court cannot go behind this decree and examine as to whether the ground exists or no. Mr Anand further pointed out that it has to be borne in mind that even the suit for ejectment brought by late Shri Ahmed Ali Khan was on the ground of personal requirement, and that of his family members, dependent on him. The decree holder had sought possession of the premises after the death of the tenant also on the basis of that decree, and that the decree is now sought to be executed pursuant to the appellate court judgment which is inter partes. That being so, the counsel has urged, that even on facts it cannot be said that the ground on which the ejectment decree was passed has ceased to exist because even after demise of the decree-holder, the requirement of his sons remains, and that the court examine afresh or de novo the factum of requirement of the sons, once the decree existed in favor of their father and predecessor in-interest on the ground of- his requirement and that of his family members.

(16) Mr. Ahmed has not disputed this proposition of law that ground of personal requirement cannot be confined to the landlord himself, and that it can always encompass the requirement of his family members dependent upon him. These questions now no longer open and with all respect I have to say that the ratio of the judgment of the Supreme Court is not applicable because that was a stage where the decree had not become final, and the proceedings were open till the decree had become final whereas the present is a case, where the decree has become final long time back, and the plea of subsequent or supervening circumstance is being raised at the stage of execution, when it is settled law that the executing court cannot go behind the decree.

(17) I, therefore, find it to be a case where none of the objections to the execution of the decree are sustainable, and the revision petition is liable to be dismissed. It is dismissed accordingly with cost. Counsel's- fee -Rs. 500.00 .

(18) At this stage Mr. Ahmed requests that since the petitioner has been living in these premises since long, he may be allowed some time to vacate the premises. Although he requests for six months time, but in the circumstances of the case, when the eviction decree, passed as far back as in 1960, has not yet been executed, this much time cannot be allowed. However, in the interest of justice, the petitioner is allowed two months time from today to vacate the premises, and hand over vacant possession to respondents No. 1 to 3. failing which they shall be entitled to straightway take out warrant of possession, in the execution proceedings that are already pending.

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