

Labhchand Vs. Rajkumar and ors.

Labhchand Vs. Rajkumar and ors.

SooperKanoon Citation : sooperkanoon.com/760210

Court : Rajasthan

Decided On : Jul-14-2000

Reported in : AIR2000Raj428; 2000(4)WLC599

Judge : Arun Madan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47 - Order 21, Rules 101 and 103

Appeal No. : Civil Revision Petition No. 1139 of 1999

Appellant : Labhchand

Respondent : Rajkumar and ors.

Advocate for Def. : R.P. Garg, Adv.

Advocate for Pet/Ap. : S.M. Jain, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Arun Madan, J.

1. This revision petition has been preferred by the plaintiff against an order dated 16-7-99 of the Addl. Civil Judge (Jr. Div.) No. 1, Jaipur in Civil Suit No. 273/ 98

where by the suit was held to be not maintainable and liberty was granted to file objections in the pending execution proceedings initiated by respondents who are decree holder in Civil Suit No. 114/76 decreed on 22-1-93.

2. The facts leading to this petition are stated in a nutshell are to the effect that earlier one Suresh Chand instituted a Suit No. 114/76 against Bhanwar Devi and others for permanent injunctions for restraining the defendants therein from (1) raising any construction over chowk,' pol, latrine and Chabutra's both the sides of House Nos. 1919 to 1921; (2) keeping a cabin on Chabutra and sewing machine in the pole, and (3) then letting out the cabin. The defendants therein remained absent thereby that suit proceeded ex parte and culminated into the decree having been passed ex parte on 22-1-93 whereafter, Suresh Chand sold his all portion in the house property of earlier suit to Rajkumar (respondent No. 1 herein), who filed execution petition against the defendants in earlier suit praying for removal of cabin through Court.

3. Thereafter, Labhchand (present petitioner) when came to know about aforesaid decree passed in earlier suit No. 114/76, instituted present suit No. 273/98 by impleading Rajkumar and others (present respondents) for declaration and permanent injunction claiming that the Chabutra and Cabins (which are subject matter of the decree dated 23-1-93 in earlier suit No. 114/ 76), stand in ownership of the present petitioner (plaintiff in subsequent suit No. 273/ 98) and the respondents have no concern over the same and thereby the decree of earlier Suit No. 114/76 is not binding on him (Labhchand). Thus, present petitioner in his suit No. 273/98 sought injunction that respondent No. 1 be restrained from executing the, decree for Cabin against him.

4. However, Rajkumar (present respondent who is successor in title of the decree holder in earlier suit No. 114/76 and the first defendant in present petitioner's Suit No. 273/98) moved an application before the trial Court that suit filed by the petitioner does not lie and the only remedy available to him is an application under order 21, Rule 97, CPC in execution petition filed by him (Rajkumar) to which the present petitioner objected stating inter alia that only remedy is available to file this separate suit because the decree in earlier suit was not for possession but for

permanent and mandatory injunction. Upon having considered the material on record the learned trial Court allowed aforesaid application of respondent No. 1 by its order (impugned) holding that petitioner's suit is not maintainable and application can be filed by him under Order 21 Rule 97, CPC in execution proceedings of the decree passed in earlier suit. Hence, this revision petition.

5. During the course of dictation of order, it has been given out that the learned counsel for the petitioner has moved an application stating therein that respondent No. 2 Bhanwari Devi w/o Chhuttanlal has died on 11-6-2000, therefore her legal heirs/representatives named in para 2 of the application be brought on record by arraying them as respondent No. 2/1 to 2/4. A copy of this application has already been received by the learned counsel for the respondent on or about 7-7-2000, in the facts and circumstances of the case, the application for impleading legal representatives of deceased respondent No. 2 is allowed. The amended cause title be filed and thereupon the office will place the same at appropriate place in the file.

6. Reiterating the objections raised by the petitioner in reply to the respondent's application, Shri S. M. Jain learned counsel for the petitioner vehemently contended that the decree in question being merely for permanent and mandatory injunction and not for possession, it can only be executed under Order 21, Rule 32(5) CPC for removing the Cabin, inasmuch as no warrant of possession under Order 21, Rule 33, CPC can be issued for execution of the decree No. 114/76 and, therefore, order 21 Rule 97, CPC does not apply. Shri Jain cited the decision in Sarup Singh v. Daryodhan Singh, AIR 1972 Delhi 142.

7. Shri R. P. Garg, learned counsel for the respondent urged that the present petitioner has instituted a separate suit with an oblique motive to circumvent the decree lawfully passed long back on 22-1-1993 by avoiding its execution and moreover by virtue of Order 21 Rule 101, CPC, a separate suit is barred and in these circumstances the trial Court has rightly dismissed suit of the present petitioner under the impugned order. Shri Garg cited the decision of the Apex court in Babulal v. Rajkumar, AIR 1996 SC 2050 which was followed by this Court in Ram Narayan v. Santosh 1997 (1) WLC 545.

Order 21 Rule 32(5) CPC reads as under:--

'32. Decree for specific performance for restitution of conjugal rights or for an injunction-- (5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.'

Order 21 Rule 97, CPC reads as under :--

'97. Resistance or obstruction to possession of immovable property -- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under Sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.'

8. The learned trial Court in the suit filed by the petitioner was of the view that separate suit is not maintainable since adjudication of the rights in petitioner's suit claiming Chabutra and Cabins (which were also subject matter of the decree dated 23-1-93 passed in earlier suit No. 114/76 filed by the present defendant) can be made in petition for execution of the aforesaid decree dated 23-1-93 if application under Order 21 Rule 97, CPC is filed by the present petitioner and not by way of this separate suit. A separate suit in the facts and circumstances of the present case is barred by virtue of provisions of Rule 101 of Order 21, CPC. Rules 101 & 103 of Order 21, CPC provides as under :--

'101. Question to be determined -- all questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on

an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.'

'103. Orders to be treated as decrees --Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.'

9. The object of provisions of Rules 101 & 197 of Order 21, CPC is that all questions including objections pertaining to the execution of the decree lawfully passed should be decided at the stage of execution and not by way of separate suit since that would unnecessarily add to the multiplicity of litigation besides it would also be futile exercise and if that is permitted to be done, the decree holder will be deprived of all the fruits of the decree lawfully passed and the objector will succeed in getting the same frustrated, which is not the object of the legislation introducing, aforesaid provisions in the code.

10. That apart, the legislature in its wisdom has also incorporated Section 47 in the Code of Civil Procedure which provides guidelines to the Court executing decree. Sub-section (1) of Section 47, CPC, provides that all questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Sub-section (3) thereof provides that where a question arises as to whether any person is or is not the representative of a party such question shall be determined by the Court.

11. In the instant case, it is admitted position that the suit out of which this revision petition, arises, filed by the petitioner was for declaration and permanent injunction seeking injunction that the respondent No. 1 (defendant in petitioner's suit and plaintiff in earlier suit No. 114/76) be restrained from executing the decree for Cabin against him. The suit cabin was also subject matter in earlier suit which

stood decreed on 23-1-93, and that being so, the petitioner in his suit sought injunction for non-execution of that decree with regard to the Cabin in question. The question and controversy raised in the suit filed separately by the present petitioner as to the rights relating to the cabin in question seeking injunction against the execution of decree passed on 23-1-93, all in my view such questions can be determined by the Court executing that decree and not by a separate suit, as has been provided in Section 47, CPC and Rules 101 and 103 of Order 21, CPC. I find support from the decision of the Apex Court in Babulal v. Raj Kumar, AIR 1996 SC 2050, wherein it observed as under (at page 2051):--

'It would, therefore, be clear that an adjudication is required to be conducted under Order 21, Rule 98 before removal of the obstruction caused by the objector or the appellant and a finding is required to be recorded in that behalf. The order is treated as a decree under Order 21 Rule 103 and it shall be subject to an appeal. Prior to 1976 the order was subject to suit under 1976 Amendment to CPC that may be pending on the date of the commencement of the amended provisions of CPC was secured. Thereafter, under the amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away. The determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Thus, the procedure prescribed is a complete code in itself. Therefore, the executing Court is required to determine the question, when the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance.'

12. In Sarup Singh v. Daryodhan Singh, AIR 1972 Del 142, the Delhi High Court has observed, that issue of a warrant of delivery of possession in execution of a decree for injunction passed in a suit for mandatory injunction to vacate the disputed premises is not justified either by Rule 35 or Section 51(e) and qua a decree has to be executed in the manner provided by Order 21, Rule 32 (1) and (3). The Full Bench of the Delhi High Court observed therein as under (at page 144) :--

'Rule 32(5) can, in the nature of things, not come to the aid of the decree-holder to obtain dispossession of the judgment-debtor. The act which is authorised by Sub-rule (5) to be done consists of something which may be done so far as practicable by the decree-holder himself at the expense of the judgment-debtor. The decree directing the judgment-debtor to quit and vacate the premises cannot constitute an act which may, without the will and volition of the judgment-debtor, be done by the decree-holder.'

13. Having considered the decision in Sarup Singh's case (supra), I am of the opinion that the ratio of the aforesaid decision is not attracted to the present case because in the instant case the controversy raised is altogether different.

14. Thus keeping in view the principles of law laid down in Babulal's case (supra) and the provisions referred to above, I am of the considered view that the learned trial Court has not committed any error -of jurisdiction in passing the impugned order, nor it has committed any illegality or material irregularity warranting interference by this Court in exercise of jurisdiction under Section 115, CPC. The impugned order holding the suit filed separately by the present petitioner as not maintainable, does not at all suffer from any incongruity or perversity so as to invoke revisional jurisdiction of this Court. Hence this revision petition must fail.

15. As a result of the discussion made above, this Civil revision petition is dismissed. No order as to costs. However, since proceedings for execution of decree passed in January 1993 are pending, the Executing Court is directed to expeditiously decide the execution proceedings but not beyond three months from the receipt of this order. A copy of this order be sent to the trial Court and Executing Court forthwith.