

Lrs. of Ram Kumar Vs. Lrs. of Gulam Rasool

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Court : Rajasthan

Decided On : Mar-24-1999

Reported in : AIR1999Raj308

Judge : V.S. Kokje, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 35

Appeal No. : Revn. Petn. No. 687 of 1992

Appellant : Lrs. of Ram Kumar

Respondent : Lrs. of Gulam Rasool

Advocate for Pet/Ap. : R.R. Nagori, J.

Disposition : Revision allowed

Judgement :

ORDER

1. This is a revision application against rejection of an application filed by the decree-holder for issuing a fresh warrant for possession of the suit property in execution of decree. The executing Court rejected the application on the ground that the decree had already been executed by putting the decree-holder in possession and if he had lost possession thereafter a fresh warrant could not be issued.

2. Heard Mr. R.R. Nagori for the revision-petitioner. No one appears for the non-petitioners despite service of notice.
3. The short point involved is as to whether in execution of the decree, possession was earlier given to the decree-holder and the decree was fully executed. Earlier this very point was agitated by the judgment-debtor by moving an application dated 14-6-1976 that according to the decree-holder and the report of the process-server, the possession of the property was handed over at 11.00 a.m. on 3-9-1976 and therefore the decree having been fully executed, nothing remains to be executed and fresh warrant for possession cannot be issued. This objection was dealt with by the executing Court and decided on 5th January, 1977. In paragraph 4 of its order the executing Court had observed that on perusal of the report of the proceedings it was clear that Suleman who was in possession was asked to remove his belongings from the room and he was also asked to remove his lock put on the room. Suleman did not do so on the excuse that the key was not with him and was with his wife. In these circumstances, the process server put up paper-seals on the locks. The executing Court, therefore, found that actually physical possession of the property was not delivered to the decree-holder. Holding thus, the objection was overruled. However, at a later stage on 15-9-1992 the Court held exactly contrary and rejected the prayer for issue of a fresh warrant for possession, on the ground that the decree had already been executed by putting the decree-holder in possession and, therefore, fresh warrant could not be issued.
4. The learned counsel for the revision-petitioner submitted that the decision of the executing Court dated 5th January 1977 shall be binding on the executing Court itself and on a subsequent date a different view cannot be taken as the principles of res judicata apply to different and subsequent stages of the same proceedings also. He further submitted that even on merits there is nothing on record to show that earlier the execution was satisfied by putting the decree-holder in possession. He submits that all that which was recorded by the process server is that paper-seals were put on the locks which were put by the judgment-debtor on the property. In such a case, it cannot be said that the physical possession of the immovable property was handed over to the decree-holder.

5. Having heard the learned counsel and having perused the record, I find force in the contentions raised by the learned counsel for the revision-petitioner.
6. When on 5-1-1977 the executing Court had categorically held, overruling an objection of the judgment-debtor that the possession of the property was not delivered to the decree-holder on 3-9-1976 at a subsequent stage the same matter could not have been agitated by the judgment-debtor and the Court also could not have taken a different view. A perusal of the report of the process server also clearly shows that physical possession of rooms concerned were not handed over to the decree-holder. The process server has reported that a lock was put on the rooms, the judgment-debtor refused to surrender the keys of the locks and took a plea that the keys were with his wife and in such circumstances the process server put a seal on the locks. This is hardly a legal manner of handing over possession to a decree-holder. At best this would amount to taking of the property in possession by the Court itself but it would not amount to handing over possession to the decree-holder. Thus, there is no material on record to show that the decree was already executed by handing over possession of the property to the decree-holder. There would, therefore, be no impediment in issuing another warrant for possession.
7. Another peculiar feature of the case is that the process server chose to execute the decree piecemeal. When he had to deliver possession of the entire immovable property, he gave possession of a part of the property and for the other part he put seals on the locks put by the judgment-debtor of the property.
8. Such a method of execution is not known to law and there is no specific rule providing for such a procedure. It will be very difficult to say that the decree has to be taken to be executed in such a manner.
9. In the present case, the outer portion of the property is said to be handed over and the inner portion is yet in possession of the judgment-debtor. When there is no access to the rooms other than the portions said to be handed over to the decree-holder by the process server, this will only result in further litigation and legal battles between the decree-holder and the judgment-debtor. In this situation, therefore, the possession of the entire property has to be taken to be with the

Court so far as it is not handed over to the decree holder as a whole.

10. In view of the aforesaid discussion, the order under revision deserves to be, and is hereby, set aside. The executing Court is directed to issue a fresh warrant of possession to see that the entire property mentioned in the decree is put in possession of the decree-holder.

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