

Abdul Gaffar Vs. Narendra Kumar

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Court : Rajasthan

Decided On : Dec-04-1991

Reported in : 1992(3)WLC503; 1991WLN(UC)434

Judge : N.K. Jain, J.

Appeal No. : S.B.C. Misc. Appeal No. 176 of 1990

Appellant : Abdul Gaffar

Respondent : Narendra Kumar

Advocate for Pet/Ap. : Mr. M.C. Bhoot

Disposition : Appeal dismissed

Judgement :

N.K. Jain, J.

1. This miscellaneous appeal is directed against the order of learned Additional District Judge, No. 1, Jodhpur in Civil misc. case No. 70-B/90 whereby the appellant's application under 0.39 Rule 1 and 2 read with Section 151 C.P.C. has been rejected.

2. The main contention of Mr. Bhoot is that the court has acted without jurisdiction in deciding the application without any order passed by executing court under

Order 21 Rule 98 C.P.C. The court should have issued notice under Order 21 Rule 97 to the decree-holder particularly in view of the report of the Sale Amin dt. 1.5.90 and thus, the order is liable to be set aside in this misc. appeal.

3. Mr. Y.R. Vyas, Power of attorney holder of the respondent who has appeared in person has submitted that the respondent has obtained a decree for a shop with godown against the petitioner long back and he has obtained a part of the possession of the godown on 2.8.84 in execution of this decree which was passed in the year 1978. He has also submitted that the appellant is a stranger and he has no right to be heard and with the connivance of the judgment-debtor for one reason or the other dragging litigation and delaying the execution of the decree.

4. I have heard Mr. M.C. Bhoot, learned Counsel for the appellant and Mr. Y.R. Vyas, learned power of attorney holder of the respondent and gone through the plaint and report dt. 1.5.90 as well as the orders of this Court alongwith the relevant provisions of law. This appeal is pending since 12.9.90. As agreed by learned Counsel for the parties, the same has been heard finally at the admission stage.

5. Order 21 Rule 97 deals with the resistance or obstruction to possession of immovable property and a stranger has no right to be heard under Order 21 Rule 97. The purpose behind this is that if a stranger is permitted to move the application, any number of stranger by moving such applications can frustrate the execution of the decree. In case of bonafide, if a person other than the judgment debtor is dispossessed from the premises in question by the decree-holder, he may move Under Order 21 Rule 98 when the person satisfies the court and if it is found that he has been wrongly evicted in an execution of decree, then the possession be restored back to him as per Order 21 Rule 99.

6. In the instant case one Zahur Vllah instituted a suit which was ultimately dismissed by the Supreme Court as withdrawn in the year 1985 and prayer for impleading party was also rejected. It is pertinent to note that in misc. appeal No. 101/84, this Court has observed that Abdul Ghafoor is not in a position to explain that how he has come into possession of the suit premises and dismissed the appeal. Thereafter one Abdul Ghafoor filed two revisions No. 500/88 and 185/89

but he has not been able to explain and satisfy the court as to how he has come into possession and was held that he being a stranger has no right to be heard and the revisions were dismissed with the cost of Rs. 1000/- by this Court on 24.10.89. The appellant has filed a suit on the basis of report of Sale Amin dt. 1.5.90 and the lower court has held that he is a stranger. Before me also, the appellant has not been able to show and convince me the grounds on the basis of which the proceedings can be stayed before the learned trial court and the impugned order can be set aside. Under the circumstances and in view of the above facts and the provisions of law, I am not inclined to interfere with the impugned order, as the trial court has not found either prima facie case or balance of convenience or irreparable loss in favour of the appellant.

7. Accordingly, this appeal has no force and, the same is hereby dismissed.

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