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Court : Chennai

Decided On : Oct-14-1976

Reported in : AIR1977Mad411; (1977)1MLJ494

Judge : Ramanujam, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47

Appeal No. : A.A.A.O. No. 39 of 1975 against order of Sub-J. Chidambaram in C.M.A. No. 59 of 1974

Appellant : Poomalai

Respondent : Ramalingam

Judgement :

1. This appeal is directed against the decision of the lower appellate court awarding a damage of Rs. 750 in an application under S. 47, C.P.C. and reversing the order of the trial Court rejecting the respondent's claim.

2. The appellant herein executed a sale deed in favour of the respondent in relation to certain house property on 7-7-1967. However, he refused to register the sale deed. Therefore, the respondent had the sale deed compulsorily registered on 18-10-1967. Thereafter to recover possession of the property from the appellant, the respondent filed O. S. No. 121 of 1969 which was one for declaration of his title to the property and for recovery of possession of the same. The said suit was resisted by the appellant but it was ultimately decreed on 10-11-

1970. At the time of the passing of the decree the appellant was granted four months' time for putting the respondent in possession of the property. Since possession was not given within the said period of four months, the respondent put the decree in execution and actually took possession of the property under a delivery receipt Ex. A-1. At the time of taking delivery he said to have found that the roof of the house has been removed and that even the walls were found dilapidated. Thereafter he issued a notice to the appellant under Ex. A-2, on 19-4-1972, claiming Rs. 2,000 as damages for the loss caused to the property by the respondent subsequent to the date of the decree. Under Ex. A-3, the appellant denied his liability for the damages claimed stating that he did not cause any damage to the property that the house being 80 years old, the roof came down by natural cause and that for such natural cause he was not responsible at all.

3. Subsequently the respondent filed E. A. 617 of 1973 under Sec. 47, C.P.C. claiming a sum of Rs. 2,000 as damages, Rs. 1,500 being the value of the materials removed by the appellant subsequent to the date of the decree and Rs. 500 being the cost of construction of the superstructure as it stood on the date of the decree. The said application was resisted by the appellant on two grounds-(1) that he has not caused any damage to the house either from the date of the sale or from the date of the decree and, therefore, the respondent is not entitled to claim any damages in this regard and (2) that the respondent's claim for damages in the circumstances of the case cannot come within the scope of S. 47 of the Code.

4. The trial Court held that the respondent has not established that the appellant removed any materials with a view to cause any wrongful loss to the respondent subsequent to the date of the decree and that even otherwise damages for the loss caused in an application under S. 47 of the Code.

5. On an appeal by the respondent, the lower appellate court, however, disagreed with the view of the trial court on both these questions. On the question of maintainability of the application under S. 47 claiming damages for loss caused to the property, lower appellate court felt that the said application is maintainable. On merits also the lower appellate court held that the respondent has made out his

case for damages in a sum of Rs. 750. The decision of the lower appellate court has been challenged by the appellant in this appeal.

6. According to the learned counsel, the lower appellate court is in error holding that the respondent's application claiming damages will be maintainable under S. 47 and the proper remedy for the respondent, if at all, is to file a separate suit for the purpose. The learned counsel for the appellant relies on a Bench decision of this court in *Ramu Shettithi v. Maniappur Shettithi*, 33 Ind Cas 520: (AIR 1917 Mad 79(1)), wherein Sadasiva Iyer and Moore JJ. had held that as regards damages for the judgment-debtor alleged negligence in having allowed the decreed house to be burnt down, it could be dealt with in execution of the decree. The learned Judges had purported to follow a decision in *Becharam Paul v. Bhugwan Chunder Ghouse*, (1880) 5 Cal LR 522. The learned counsel points out that the decisions had not been referred to by the lower appellate court. A perusal of the decision in *Becharam Paul v. Bhugwan Chunder Ghouse*, (1880) 5 Cal LR 522, shows that the court was not concerned in that case with the scope of S. 47 and that the question which was before the court was entirely different. It is true the lower appellate court had not referred to the Bench decision in *Ramu Shettithi v. Maniappa Shettithi*, 33 Ind Case 520: (AIR 1917 Mad 79(1)). However, it has referred to a latter Bench decision of this court in *Dhanarajagerji v. Parthasarathy*, AIR 1933 Mad 825, which has considered the earlier decision in *Ramu Shettithi v. Maniappa Shettithi*, 33 Ind Cas 520: (AIR 1917 Mad 79(1)) and dissented from it. In the latter decision of *Dhanarajagerji v. Parthasarathy*, AIR 1933 Mad 825, Venkatasubba Rao and Reilly JJ. and dealt with the scope of S. 47 specifically. With reference to a claim for damages, according to the learned Judges when a decree awards a person a certain property he is entitled to get it in the same state in which it was when that decree was passed. If the judgment-debtor by his positive and wilful action caused depreciation in value in the property decreed since the date of the decree, the question whether the judgment-debtor is liable to make good the depreciation is a question to be considered in execution as that question relates to the execution, discharge or satisfaction of the decree which has to be disposed of under S. 47. The said decision refers with approval to an earlier decision of the Bombay High Court in *Harishridhar Prabhu v. Shakharam Padmanna Magdum*, Air 1923 Bom 391 where the following statement of the law

is found (at p. 392 of AIR):--

"But we think that the question with regards to the waste committed by the judgment-debtor after decree was a question arising between the parties relating to the execution, discharge or satisfaction of the decree, and must be determined by the court executing the decree and not by a separate suit. The appellant is entitled under the decree to the property of which possession was directed to be given to him. If the property has depreciated in value or been damaged since the decree, owing to the wilful action of the defendant, it is a question in execution whether the defendants are liable to make good the loss."

Bai Lalbu v. Mohanlal, AIR 1925 Bom 385, also lays down that where the question is whether a successful party had got possession of what was directed to be given to him by the decree, if the property, while in the judgment-debtor's possession, suffered deterioration by damage subsequent to the decree, the claim for compensation can be considered in execution under S. 47.

7. On a due consideration of the matter, I am of the view that the latter decision of this court in Dhanarajagerji v. Parthasarathy, AIR 1933 Mad 825 lays down the correct principle and the earlier decision in Ramu Shettithi v. Maniappa Shettithi, 33 Ind Cas 520: (AIR 1917 Mad 79(1)) cannot be taken to lay down correctly the law on the point. On the passing of a decree for the possession of the property, the judgment-debtor is under liability to hand over possession of the property as it was on the date of the decree. If at the time of the delivery it is found that the property decreed has depreciated in value by the positive and wilful conduct of the judgment-debtor then the question how far the judgment-debtor will be liable for causing such depreciation in the value of the property can be dealt with as an issue arising in execution, as it falls within the scope of the expression 'discharge or satisfaction of the decree'. I am, therefore, of the view that the lower appellate court is not right in holding that the respondent's application claiming damages is not maintainable under S.

8. Coming to the question of damages, the respondent's case was that the appellant judgment-debtor purposely and wilfully caused damages to the property by removing the tiles and rafters which formed part of the roof of the house and damaging the walls and such damage was to the extent of Rs. 1,500. As already stated, the trial court found that the respondent has not established his case that the judgment-debtor did any positive act as a result of which damage has been caused to the house. The lower appellate court has agreed with the trial court in this regard and found that the appellant did not remove the superstructure of the house as claimed by the respondent after the decree. In the face of his finding, the question is whether the appellant can be made liable in damages. According to the appellant the deterioration of the house was due to natural causes and not as a result of any positive or wilful act done by him. It is well established that a judgment-debtor is under no liability to maintain the house in good repair till possession of the property is taken by the decree-holder. Though the law makes him liable in damages for any positive act causing damages to the property decreed, it does not fasten liability on him by keeping the house in good repair till he hands over possession of the property. Sec. 55 of the Transfer of Property Act which deals with the rights and liabilities inter se between a buyer and a seller throws some light on this point. Section 55(i)(f) points out that the seller is bound to give such possession of the property sold as its nature admits. Therefore, as a seller, the appellant is bound to hand over possession of the property sold as soon as the title has passed from the seller to the buyer. Section 55(5)(c) provides that where the ownership of the property has passed to the buyer, the buyer is bound to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller. This provision indicates that the seller can be made liable for any loss arising from the destruction, injury and decrease in value of the property only if he has done any positive or wilful act resulting in such loss. But where the loss has occurred as result of natural causes, the seller cannot be made liable. In this case, both the courts below have found that the specific case of the respondent that the appellant has purposely and with a view to cause loss to him, removed the superstructure has not been established. On the materials on record. I am inclined to agree with the said finding. In the face of such finding, it is not possible to say that the loss by way of depreciation in the value of the property

can be taken to have been caused only by natural causes or by some one else. Apart from this, the lower appellate court has not given any basis for fixing the quantum at Rs. 750 as against the claim of Rs. 2,000 made by the respondent. The order of the lower appellate court does not indicate on what materials the damages of Rs. 750 was fixed. Even on the basis that the respondent will be entitled to claim some damages, the order of the lower appellate court fixing a sum of Rs. 750 on an arbitrary manner cannot be accepted. In the view I have taken that the case of the respondent that the appellant by his positive and wilful act had caused damages to the house has not been made out, the appeal has to be allowed. But there will be no order as to costs. No leave.

9. Appeal allowed.

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