

Raghubir Shaw Vs. Rawsan Shaw

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Court : Kolkata

Decided On : Feb-14-1939

Reported in : AIR1940Cal197

Appellant : Raghubir Shaw

Respondent : Rawsan Shaw

Judgement :

1. This appeal is on behalf of the decree-holder, and it arises out of proceedings started on an application of the judgment-debtor to the executing Court, by which he claimed restitution of the structures which were on the land. The facts are these the decree-holder was the landlord and the judgment-debtor the tenant in respect of some land. The structures on the land, it appears, had been raised by the tenant and were his properties. The decree-holder instituted a suit in ejectment after service of notice to quit, and he wanted khas possession of the land, which was the subject-matter of the suit. He obtained a decree on 17th June 1935. The material portion of the decree runs thus:

It is further ordered and decreed that the plaintiff do get khas possession of the land in suit by ejecting defendant therefrom. It is further ordered that the defendant do remove the structures which are on the land, within two months from this date, failing which the structures will be removed by the plaintiff and the defendant will be liable for costs.

2. The defendant did not remove the structures within the time limited in this decree which was passed on 17th June 1935. The plaintiff decree-holder applied for delivery of possession of the land, and the possession of the land was delivered to him on 31st December 1937. In delivering possession of the land, the peon put him in physical possession at least of one of the huts which were standing on the land and symbolical possession of the rest. On 17th January 1938, the present application by the judgment-debtor was made, and in that application he said that under the terms of the decree the decree-holder could not take possession of the structures, that the structures were his and the structures must be restored to him; at least the decree-holder must dismantle them and make over to him the materials. This last-mentioned contention has been accepted by both the Courts below.

3. In our judgment, the position taken by the judgment-debtor cannot be supported and the orders made by the Courts below must be discharged. The decree-holder sued for khas possession of the land and he got what he had prayed for. The judgment-debtor was given the option to remove the structures within two months of the decree. The decree therefore provided that if he did not remove the structures within the said period the decree-holder would be entitled to do so, and if the decree-holder did so, he would be entitled to recover the cost of removal from the judgment-debtor. This is how we construe the decree. By the decree a privilege or right was given to the plaintiff to remove the structures in case they were not removed by the defendant within the period limited in the decree, and a further liability was imposed on that contingency upon the defendant, namely to pay the cost of removal. The judgment-debtor not having removed the structures within the time limited, he lost the right of removing the structures. The decree-holder has taken possession of the land after the period of grace allowed to the judgment-debtor and the structures were there then. It is optional to him whether he keeps them or dismantles them. If he keeps them he cannot be compelled by the judgment-debtor to remove them or to pay compensation. The right of privilege conferred on him by the decree cannot be converted by the executing Court into a liability. The principle on which we proceed has been laid down in *Sreenath Chakravarty v. Bhogoban Chandra Chakravarty*, a case referred to with approval in the case in *Bir Bikram Kishore Manikya v. Raj Kumar Pal* : AIR1934 Cal751 .

The result is that this appeal is allowed, and the application of the judgment-debtor on which these proceedings were started is dismissed. In the circumstances we make no order as to costs. The cross-objection is dismissed but without costs.

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