

Ram Murti and ors. Vs. Dev Raj and ors.

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SooperKanoon Citation : sooperkanoon.com/901648

Court : Jammu and Kashmir

Decided On : Nov-18-2003

Reported in : 2004(2)JKJ67

Judge : Y.P. Nargotra, J.

Acts : Code of Civil Procedure (CPC) - Section 47

Appeal No. : C. Rev. No. 153/2003

Appellant : Ram Murti and ors.

Respondent : Dev Raj and ors.

Advocate for Def. : Dinesh Verma, Adv.

Advocate for Pet/Ap. : B.D. Nayyar, Adv.

Disposition : Revision dismissed

Judgement :

Y.P. Nargotra, J.

1. This revision petition is directed against the order dated 2nd August 2003 passed by learned Sub-Judge, Rajouri, whereby the application of the petitioner, seeking execution of the decree has been dismissed. The suit of the plaintiff was decreed vide order dated 22nd July 1991, in the following terms :-

'In view of the admission and undertaking of the defendants, it is declared that land in dispute comprising of Khasra Nos: 941, 941/3 and 941/4 are in possession of the plaintiffs as owner with which the defendants have no concern. Therefore, the plaintiff is at liberty to seek injunction in the event of any threat to his legal right. With these observations, the file is consigned to records.'

2. After passing of the said Judgment, a decree came to be framed which admittedly, was not in accordance with the Judgment. However, on the strength of that decree, an execution application was filed and demolition of the construction raised by the Judgment debtor over the suit property was sought. Learned Trial Court has dismissed the execution application of the petitioner on the ground that the Judgment passed in the suit did not contain any direction to the defendants in the nature of any injunction and it only said that in the event of any threat to his legal right, the plaintiff shall be at liberty to seek injunction and, therefore, there was no restraints in the judgment against the defendants. Learned counsel for the petitioner submits that in the decree even if it was not in consonance with the Judgment passed, even then the Executing Court was bound to execute the said decree and cannot say that the decree has not been properly prepared or that it is not in consonance with the Judgment. He further submits that only course open to the aggrieved party was to file an appeal and get the decree set aside.

3. I am not in agreement with the learned counsel for the petitioner. The decree is the reflection of the conclusions formally drawn by a Civil Court while deciding the suit in favour or against a particular party. Therefore, the Executing Court was well within its rights to examine and see whether the decree was an executable decree and drawn in accordance with the Judgment. Therefore, there is no merit in the contention of the learned counsel for the petitioner.

4. In this view of the matter, there is no merit in this revision petition and the same is, as such, dismissed.