

Sri Horilal and Another Vs. Additional District Judge, Court No.6, Agra and Others

Sri Horilal and Another Vs. Additional District Judge, Court No.6, Agra and Others

SooperKanoon Citation : sooperkanoon.com/917316

Court : Allahabad

Decided On : Apr-27-2011

Judge : Rajes Kumar, J.

Acts : Code of Civil Procedure (CPC) (C.P.C.) - Section 47, 151, Order 6, Rule 17; Consolidation of Holdings Act - Section 30(b); Contract Act - Section 56

Appeal No. : Civil Misc. Writ Petition No. 69706 of 2009

Appellant : Sri Horilal and Another

Respondent : Additional District Judge, Court No.6, Agra and Others

Advocate for Pet/Ap. : Sri. V.D. Dubey

Judgement :

1. Heard Sri V.D. Dubey, learned counsel for the petitioners and Sri Rajiv Gupta, appearing on behalf of the respondents.

2. By means of the present petition, the petitioner is challenging the order dated 26.11.2009, passed by the respondent no.1 in Civil Revision No. 77 of 2008 arising from the order dated 8.4.2008.

One Atar Singh, the father of the respondent no.2, and the husband of respondent no.3 filed Original Suit No. 277 of 1982 against the father of the petitioners, Sri

Ram Het, for specific performance of agreement to sell dated 5.11.1981, in respect of Khasra No. 715, measuring 1 Bigha 7 Biswas and Khasra No. 724, measuring 15 Biswas, total 2 Bighas 2 Biswas, situate in Mauja Bisehara, Tehsil-Kheragarh, District Agra. The said Suit was dismissed on 29.7.1983 against which Appeal No. 225 of 1983 was filed before this Court. The valuation was below Rs.5 Lakhs, in view of notification dated 6.5.1995, the appeal has been sent back to Agra Judgeship, which was renumbered as Civil Appeal No. 167 of 1997. During the pendency of the appeal, Atar Singh died on 11.4.1999. His heirs were substituted. Lateron, Ram Het also died on 25.9.1987. The said appeal has been allowed by the appellate court on 7.10.2002 and the order dated 29 th July, 1983, passed by the Trial court has been set aside. The appellate order dated 7.10.2002, passed in Appeal No. 167 of 1997, has not been challenged.

3. The respondent nos. 2 and 3 have filed Execution Case No. 16 of 2006 before the execution court to execute the decree dated 7.10.2002. In the execution proceedings, the petitioners filed objection under Section 47 of the CPC stating therein that in view of the procedure provided under Section 30(b) of the Consolidation of Holdings Act, no execution of the aforesaid Khasra Plot numbers can take place, which are now not in the name of judgment debtor. The said objection was registered as Misc. Case No. 106 of 2006. The said objection has been rejected by the Civil Judge, Senior Division, Agra vide order dated 8.5.2008 stating that the petitioners have been allotted Chak Nos. 664 and 882 in place of Chak Nos. 715 and 724. Therefore, the decree can be executed. Against the order dated 8.4.2008, the petitioners filed the Civil Revision before the District Judge, being Civil Revision No. 77 of 2008 on 5.5.2008. The said revision has been rejected vide impugned order dated 26.11.2009. Hence the present petition.

4. Learned counsel for the petitioners submitted that Khasra Plot nos. 715 and 724 cease to exist. In the consolidation proceeding, they have been converted into Nalas and Chak Roads. However, it is not in dispute that against the aforesaid Chaks, the petitioners have been allotted Chak Nos. 664 and 882.

5. The submissions of learned counsel for the petitioners are that the suit was decreed in respect of Chak Nos. 715 and 724 and the decree can only be

executed against the said plot of Chaks and not against any other Chak number. Therefore, the decree cannot be executed against Chak Nos. 664 and 882. He submitted that the orders of the court below are patently illegal and are liable to be set aside. He submitted that under Section 56 of the Contract Act, the decree stands void, which cannot be executed in view of the subsequent event. Therefore, the orders of the courts below are liable to be quashed. He further submitted that defendant nos.2 and 3 themselves moved an application before the execution court in July, 2004, under Order VI, Rule 17 read with Section 151, CPC, which was registered as Misc. Case No. 110 of 2004 wherein it has been stated that Khasra Nos. 715 and 724 have been demolished in the consolidation proceeding. Thus, in the alternative, the amount paid may be returned alongwith the interest.

6. The said application has been rejected by the court below vide order dated 15.5.2006. He submitted that the petitioners have deposited the entire money paid by the respondent's father alongwith interest at the rate of 6% per annum in the court below. In support of the contention, he relied upon the decision of the Apex Court in the case of *Pviare Lal v. Hori Lal*, reported in AIR 1977 SC 1226.

7. Sri Rajeev Gupta, appearing on behalf of the respondents, submitted that in place of Plot Nos. 715 and 724, the petitioners have been allotted Plot nos. 664 and 882. Therefore, the execution of decree is not impossible. The decree can be executed against the plot numbers, which have been allotted in the consolidation proceeding. In support of the contention, he placed reliance on a decision of the Apex Court reported in (2005) 6 SCC 40, *Phool Pata and another vs. Vishwanath Singh and others*.

8. In my view, the issue involved is squarely covered by the decision of the Apex Court in the case of *Pviare Lal v. Hori Lal* (supra). In the said case, the question for consideration was whether the defendant was liable to specifically perform the contract for sale of his old holding, even after its consolidation and allotment of a Chak. The Apex Court, on the consideration of Section 30 of the U.P. Consolidation of Holdings Act, 1953 and Section 56 of the Transfer of Property Act, has held as follows:

Section 54 of the Transfer of Property Act shows that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It has however been specifically provided in the section that such a contract does not, of itself, create any interest in or charge on such property. It would therefore follow that the agreement for sale in the present case did not give rise to any interest in the original holding of the defendant as the tenureholder. That being so, there could be no occasion for the transfer of any such liability in the new land or 'chak' of the defendant so as to attract clause (b) of Section 30 of the Act. In fact what the defendant was bound to do under Section 55(1) (d) of the Transfer of Property Act was to execute a proper conveyance of the property which was the subject-matter of the contract for sale, and not of any other property. So when he lost that property as a result of the scheme of consolidation and his rights, title and interests ceased in that property by virtue of clause (a) of Section 30 of the Act, the agreement for sale became void within the meaning of Section 56 of the Contract Act, and it is futile to urge that they were saved by clause (a) or clause (b) of Section 30 of the Act.

9. In the present case, the description of the property has been completely changed. The suit was decreed in respect of Khasra No. 715, measuring one Bigha Seven Biswas and Khasra No. 724, measuring 15 Biswas, total two Bighas two Biswas, situate in Mauja Bisehara, Tehsil-Kheragarh, District Agra. The said properties are admittedly not in existence. In the consolidation proceeding, the different properties, numbered as Chak Nos. 664 and 882, have been allotted to the petitioners. Since the description of the property has been completely changed, the suit for specific performance cannot be executed against Chak nos. 664 and 882.

10. The decision cited by the learned counsel for the respondent in the case of Phool Pata and another vs. Vishwanath Singh and others (supra) is not applicable to the present case. In the said case, the suit was decreed for one Acre and 99 decimals and after completion of the consolidation proceeding, the area became two Acres and two decimals, but the property in respect of which the decree was passed was in existence and remain the property of judgement debtor.

11. In the case of Baikunthi Devi and others vs. Mahendra Nath and another, reported in (1977) 2 SCC 496, the Apex Court held that where the same land has been allotted to the vendor as a result of consolidation proceeding, less a tiny bit, the suit for specific performance can be executed.

12. These two decisions are not applicable to the present case and are clearly distinguishable.

13. In view of the above, the writ petition is allowed. The impugned order dated 26.11.2009, passed by the Additional District Judge, Court No.6, Agra in Revision No. 77 of 2008 is set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com