(1957) 01 AHC CK 0019

Allahabad High Court

Case No: Ex. Second Appeal No. 669 of 1954

Mohabbat Ali		APPELLANT
	Vs	
Ajudhia Prasad and Another		RESPONDENT

Date of Decision: Jan. 15, 1957

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 18, 38, 47

Citation: AIR 1957 All 285

Hon'ble Judges: V.D. Bhargava, J

Bench: Single Bench

Advocate: Anang Lal Gupta, for the Appellant; Shambhu Prasad, for the Respondent

Final Decision: Dismissed

Judgement

V.D. Bhargava, J.

This is a judgment-debtor''s appeal arising out of execution proceedings. It appears that the appellant and the respondents were partners in a business of burning coal in a state forest. Thereafter there was some dispute between the parties and a suit was filed for the dissolution of the partnership and for accounts, A decree was passed in the following terms:

"Partnership is declared to have been dissolved with effect from 6-2-50 date of notice, plaintiff''s suit is decreed for recovery of Rs. 469/6/- from defendant No. 2. The plaintiff and two defendants will be entitled to 316 bags of coal each i.e. 1/3 in the whole of it. Plaintiff will get 1/2 costs of the suit from defendant No. 2 and bear the other half himself."

2. The decree was put in execution on the 27th October, 1950, in respect of the decretal amount including costs against Mohd Ali, but we are not concerned with that portion of the decree. On the 1st of May, 1951, the decree-holder applied for execution of the decree against both the Judgment-debtors for recovery of his l/3rd share of the coal in the jungle of village in dispute and he further alleged that out of

the said coal six thela loads of coal was in the stock of one Sardar Hari Singh and the remaining coal was in the jungle. Therefore, he claimed his l/3rd share in the coal which was with Sardar Hari Singh and also his 1/3rd share which was still in the jungle.

3. An objection was raised by the judgment-debtor that this decree was not an executable decree. It was contended by him that this decree was only declaratory decree and not a decree by virtue of which possession could be obtained. This objection found favour of the trial court and he rejected the application. There was an appeal by the decree-holder and the Additional Civil Judge in appeal dismissed the objections of the judgment-debtor and has allowed execution to proceed. Aggrieved by the judgment of the learned Additional Civil Judge the judgment-debtor has come up to this Court.

4. It has been argued on behalf of the judgment-debtor appellant that the decree was only a declaratory decree and was not executable. It was argued that the decree nowhere says that the defendants would be entitled to possession and it was contended that it had only given a declaration.

It is true that the decree does not mention the word ''possession'' and it would have been much better if the word ''possession'' had been mentioned therein, but the decree is clear in terms and is executable. The decree nowhere says "It is declared that the decree-holder is entitled.....''''

The forms of the decrees in a case of dissolution to partnership can only be for actual delivery of possession or for accounts. It can never be for a declaration only. The declaration in a suit for partnership consists of the fact that the partnership is to stand dissolved from a certain date. The forms of the decree are given in Appendix D to the First Schedule of the CPC as forms Nos. 21 and 22. From the nature of the suit and also from the nature of the decree passed it is clear that the decree was for actual possession of that coal.

It was next argued that the appellant had obtained possession of that coal after paying the government revenue. It may have been so but that was much before the decree was passed and this question should have been raised before the decree was passed. An executing court cannot go behind the decree and will execute it as it stands. If there was any error it was open to the appellant either to come up in appeal or to apply for amendment of the decree. In the circumstances, I see no force in the appeal. It is accordingly dismissed with costs.