

(2007) 12 AHC CK 0130

Allahabad High Court

Case No: None

Bal Krishna Verma

APPELLANT

Vs

VIth Additional District Judge and
Others

RESPONDENT

Date of Decision: Dec. 17, 2007

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 146
- Transfer of Property Act, 1882 - Section 52

Citation: (2008) 2 AWC 1217

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. Babu Lal (who died on 5.7.1984) filed suit for eviction and recovery of arrears of rent against tenant Dharam Das in the form of O.S. No. 857 of 1966. The suit was decreed on 17.4.1969. Against the said judgment and decree, Dharam Das filed Civil Appeal No. 48 of 1969, which was allowed on 10.3.1971. Against the said judgment and decree of the lower appellate court. Babu Lal filed Second Appeal No. 2067 of 1971, which was allowed on 19.12.1978, judgment and decree passed by lower appellate court, was set aside and judgment and decree passed by the trial court dated 17.4.1969 decreeing the suit of Babu Lal was restored.

Property in dispute in a shop having an area of about 50 square yard. The rent is Rs. 5 per month.

3 On 17.8.1984, Execution Case No. 11 of 1984 for execution of decree passed in second appeal was filed purporting to be on behalf of Babu Lal, who had, in fact,

died on 5.7.1984. On the same day, i.e., 3.8.1984, an amendment application was filed by respondent No. 3-Jagdish Saran (brother of Babu Lal) in the execution case for being added as applicant No. 1/1 claiming that decree had been assigned to him. On 24.11.1984, Dharam Das since deceased and survived by petitioner and respondents Nos. 10 to 15 filed objections that there was no assignment. Another objection was filed by Dharam Das on 18.5.1985 to the effect that respondent No. 3 was not legal heir of Babu Lal. On 14.10.1988, Executing Court-II Additional Munsif, Jhansi rejected the objections of Dharam Das and held that respondent No. 3 was assignee of the decree, hence entitled to file execution application. Against the said judgment and order, Civil Revision No. 276 of 1988 was filed by petitioner, which was dismissed on 30.11.1990 by Vth A.D.J., Jhansi, hence this writ petition.

4. The case of respondent No. 3 was that property in dispute belonged to joint family and partition took place in the year 1970 [when first appeal before lower appellate court (Civil Appeal No. 48 of 1968) was pending] in which he was allotted the property in dispute.

All the legal representatives of Babu Lal, i.e., respondents No. 4 to 6 and 8 and 9 filed their no objection before executing court on 18.5.1985 and accepted that Jagdish Saran alone was owner of the property in view of partition of 1970 and entitled to file execution. The only exception was of Meba Bai-respondent No. 7. However, afterwards she did not appear to press her objection.

5. The main argument of learned Counsel for the petitioner is that according to Jagdish Saran he became the exclusive owner of the property in dispute as a result of partition during pendency of first appeal before lower appellate court, hence either he should have got himself impleaded in the first appeal or at least he should have filed the second appeal in the High Court. However, as second appeal was filed by Babu Lal (which was allowed), hence Jagdish Saran cannot take benefit of the judgment and decree passed in the said second appeal.

6. Apart from Order XXI, Rule 16, C.P.C., (dealing with assignment of decree) the following provisions of law also cover the controversy in question:

(i) Order XXII, Rule 10, C.P.C.

(ii) Section 146, C.P.C.

(iii) Section 52, Transfer of Property Act.

7. Under Order XXII, Rules 3 and 4, C.P.C, it is provided that where plaintiff or defendant has died, legal representatives shall be substituted. However, Order XXII, Rule 10, C.P.C. provides that in case of assignment, creation or devolution of any interest during the pendency of the suit (including appeal), the suit (including appeal) may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved. It is, therefore, clear that in case of death, substitution is essential while in case of other assignment devolution or

creation of interest, substitution (impleadment) is optional. Similarly, u/s 146, C.P.C, it is provided that where any proceeding may be taken or application made by or against any person, then the proceedings may be taken or the application may be made by or against any person claiming under him. In this section also the use of the word "may" denotes that it is not essential that assignee or transferee shall take the proceedings. Accordingly, Jagdish Saran might file second appeal, however, it was not essential for him to file second appeal.

8. The second appeal filed by Babu Lal was quite competent and its result is binding upon Jagdish Saran. u/s 52, T.P. Act during pendency of proceedings, property in dispute cannot be transferred so as to affect the rights of any other party except with the leave of the Court. The doctrine mentioned in Section 52 of the T.P. Act is known as *lis pendens*. Supreme Court has interpreted Section 52, T.P. Act in several authorities. In some authorities, it has been held that under the facts and circumstances of the said case, transferee should be impleaded and in some cases, it has been held that transferee should not be impleaded. However, in all the authorities it has been held either directly or impliedly that even in the absence of his impleadment, transferee is also bound by the decree or order. If decree or order is passed against the transferor, then transferee is also bound by the said judgment and decree. However, if judgment or decree is passed in favour of the transferor, then also transferee *pendente lite* is entitled to reap the benefit of the said order or decree. On this point, the following three recent judgments of the Supreme Court may be noticed.

1. [Bibi Zubaida Khatoon Vs. Nabi Hassan Saheb and Another,](#)
2. [Amit Kumar Shaw and Another Vs. Farida Khatoon and Another,](#)
3. [Sanjay Verma Vs. Manik Roy and Others,](#)

9. In the aforesaid authority of 2004, reliance was placed upon several earlier Supreme Court authorities including the authority of [Dhurandhar Prasad Singh Vs. Jai Prakash University and Others,](#) in which it was held as follows:(denoted in 2004 authority also)

Where a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, yet he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary.

10. In view of the above, it is quite clear that transferee from plaintiff is bound by the result of the litigation. The said result may be either in favour of the transferor or against him.

11. Similarly, in the aforesaid authority of A.K. Shaw of 2005, it was held that transferee was proper party and should have been impleaded. Para 14 of the said

authority is quoted below:

An alienee pendente lite is bound by the final decree that may be passed in the suit. Such an alienee can be brought on record both under this rule as also under Order I, Rule 10. Since under the doctrine of lis pendens a decree passed in the suit during the pendency of which a transfer is made binds the transferee, his application to be brought on record should ordinarily be allowed.

12. In the third authority of Sanjay Verma of 2007, it was held that transferee pendente lite in a suit for specific performance of agreement to sell could not be impleaded. In the said authority also in Para 12 it was held that "Transferee pendente lite is bound by the decree just as much as he was a party to the suit;".

13. In view of the above, even though Jagdish Saran was not impleaded in the first appeal pending before lower appellate court and even though he had not filed the second appeal still he is bound by the result of the second appeal, i.e., he can reap the benefit of the decree for possession passed in the second appeal.

14. Now the provision of Order XXI, Rule 16, C.P.C. may be noticed, which is quoted below.

16. Application for execution by transferee of decree.--Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it, and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided also that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Explanation.--Nothing in this rule shall affect the provisions of Section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.

15. The aforesaid Explanation inserted by C.P.C. Amendment Act of 1976 clearly provides that by virtue of Section 146, C.P.C, a transferee of rights in the property, which is the subject-matter of the suit may apply for execution of decree without a separate assignment of the decree. Assignment of decree is slightly different from assignment of property. In case of assignment of property, the position is actually

governed by Section 146, C.P.C.

16. Accordingly, in my opinion, Jagdish Saran was fully entitled to file application for execution u/s 146, C.P.C.

17. As noticed earlier in this judgment, a transferee pendente lite may take the proceedings or make the application, which could be taken or made by the transferor, however, it is not essential. It is only optional as even otherwise transferee would be bound by the judgment/decreed. It is also, therefore, clear that transferee may skip one stage/tier of the proceedings and come forward at the subsequent stage/tier of the proceedings. Jagdish Saran was entitled but not obliged to file the second appeal. He opted not to file second appeal and second appeal was filed by original plaintiff. After the decision of the second appeal, Jagdish Saran could file execution application u/s 146, C.P.C. even during life time of original plaintiff Babu Lal. However, he filed the execution application after the death of Babu Lal. It was, therefore, perfectly maintainable, u/s 146, C.P.C. read with the Explanation to Order XXI, Rule 16, C.P.C.

18. Moreover, property being joint family property and Jagdish Saran having share in the property being member of the joint family could file execution application even without partition. All other legal representatives of Babu Lal gave no objection and one heir did not appear in the proceedings after filing objections.

19. Accordingly, I find that the view taken by the courts below is perfectly in accordance with law. Writ petition is, therefore, dismissed.

20. As the petitioner unnecessarily and without any reasonable course obstructed the execution of the decree, hence since the date of stay order passed in revision (which may be treated to be 1.1.1989), till date tenants are liable to pay damages to Jagdish Saran at the rate of Rs. 400 per month.

21. Supreme Court in [Atma Ram Properties \(P\) Ltd. Vs. Federal Motors Pvt. Ltd.](#), has held that in case of tenancies covered by Rent Control Act, tenant may be made liable to pay reasonable damages. Condition of stay which may be more than agreed rent. Current rent of the shop in dispute may not be less than several thousands rupees per month. These damages @ Rs. 400 per month from 1.1.1989 till date may be recovered in the execution proceedings giving rise to the instant with petition.

22. Tenants, i.e., petitioner and proforma respondents No. 10 to 15, are granted six months time to vacate provided that:

1. Within one month from today tenants file an undertaking before the Prescribed Authority to the effect that on or before the expiry of aforesaid period of six months they will willingly vacate and handover possession of the property in dispute to the landlords-respondents.

2. Entire decretal amount due till date is deposited before trial court within one month for immediate payment to landlords-respondents.

3. For this period of six months, which has been granted to the tenant-petitioner to vacate, he is required to pay Rs. 6,000 (at the rate of Rs. 1,000 per month) as rent/damages for use and occupation. This amount shall also be deposited within one month before the Prescribed Authority and shall immediately be paid to the landlords-respondents.

23. In case of default in compliance of any of these conditions tenant-petitioner shall be evicted through process of Court after one month. It is further directed that in case undertaking is not filed or decretal amount of Rs. 6,000 are not deposited within one month then tenants-petitioners shall be liable to pay damages at the rate of Rs. 2,000 per month since after one month till the date of actual vacation.

24. Similarly, if after filing the aforesaid undertaking and depositing decretal amount and Rs. 6,000 the accommodation is dispute in not vacated on the expiry of six months then damages for use and occupation shall be payable at the rate of Rs. 2,000 per month since after six months till actual vacation. It is needless to add that this direction is in addition to the right of the landlord to file contempt petition for violation of undertaking and take possession in pursuance of impugned orders.