
(2008) 05 GAU CK 0034

Gauhati High Court (Agartala Bench)

Case No: None

Manoj Roy and Others

APPELLANT

Vs

Gunendra Roy and
Another

RESPONDENT

Date of Decision: May 2, 2008

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 151, 24

Citation: AIR 2007 Guw 172 : (2008) 3 GLT 465

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Judgement

I.A. Ansari, J.

The predecessors-in-interest of the present petitioners, claiming themselves to be co-owners of the suit premises, instituted, Title Suit No. 17/1989, seeking eviction of the defendant, who is respondent No. 1 herein, from the suit premises. The suit came to be decreed, on 13.03.98, the decree being, for, inter alia, delivery of possession of the decretal property by evicting the defendant-judgment-debtor, his men and agents therefrom. Against the decree, so granted by the learned Assistant District Judge, North Tripura, an appeal was preferred and by judgment, dated 13.03.98, passed in Title Appeal No. 05/93, the learned District Judge, North Tripura, allowed the appeal and the decree for eviction of the defendant-judgment-debtor was accordingly set aside. The first appellate judgment and decree were put to challenge by way of second appeal, which gave rise to RSA No. 26/98. This appeal was allowed by judgment and order, dated 10.08.2007, the decree, passed by the learned First Appellate Court, was set aside and the decree for eviction, granted by the learned trial Court, was accordingly restored. The decree-holders, then, put the decree into execution, which gave rise to case No. Execution 01 (T)/2008 in the Court of the learned Civil Judge (Sr. Division), North Tripura, Kailashahar.

2. In course of time, the learned executing Court issued writ for delivery of possession of decretal property in favour of the decree-holders. It was, at this stage, that the respondent No. 2 herein made an application, under Order 21, Rule 97 read with Rule 101 of the CPC (in short, "the Code"), resisting execution of the decree, the case of the respondent No. 2 herein, while so resisting the decree, being, in brief, thus: The decretal property was jointly occupied by the objector, i.e., respondent No. 2, and the judgment-debtor, i.e., respondent No. 1, but the decree, in question, had been passed without impleading the objector as one of the parties to the suit or in any subsequent proceedings. The objector was, thus, not bound by the decree of aforementioned and the same would, if allowed to be executed, cause irreparable injury to the objector. Besides filing the above application under Order 21, Rule 97, respondent No. 2 herein also filed a petition, in the said execution proceeding, seeking stay of the execution of the impugned decree pending hearing of his application made under Order 21. Thereafter, an application was made by the objector, u/s 24 of the Code, in the Court of learned District Judge, North Tripura, Kailashahar, and this application came to be registered as Civil Misc. Case No. 07/2008. In this transfer application, the objector alleged that though he had made an application under Order 21, Rule 97, neither the said application had been registered by the learned execution Court nor was any order passed on the said application or on his application seeking stay of the execution proceeding. By order, dated 26.03.2008, passed in Civil Misc. Case No. 07/2008, the learned District Judge, on the basis of the submissions made on behalf of the objector, directed issuance of notices to the decree-holders and, in the interim, not only stayed the execution proceeding, but also directed re-call of the writ, if any, already issued for execution of the decree. It is this order, dated 26.03.2008, which stands impugned, in the present revision, by the decree-holders by making an application under Article 227 of the Constitution of India.

3. I have heard Mr. S.M. Chakraborty, learned Senior counsel, for the decree-holders-petitioners, and Mr. A.K. Bhowmik, learned Senior counsel, appearing on behalf of the respondent No. 2.

4. It has been submitted, on behalf of the petitioners, that the impugned order, dated 26.03.2008, is wholly without jurisdiction inasmuch as the application, made by the objector-respondent No. 2 herein under Order 21, was wholly misconceived, for, such an application was neither maintainable nor even registered, for, a stranger to a decree for recovery of possession of an immovable property, can, according to Mr. Chakraborty, file an application, under Order 21, Rule 99, for recovery of his possession only after he has been dispossessed pursuant to such a decree. In such circumstances, contends Mr. Chakraborty, there being no maintainable application, no proceeding, in the executing Court, could have been treated to be pending and, consequently, no application for transfer or withdrawal of the execution proceeding could have been made by taking resort to the provisions of Section 24 of the Code. This apart, according to Mr. Chakraborty, learned Senior counsel, the learned executing Court had become functus officio on having issued the writ for delivery of possession of the decretal property in favour of the

decree-holders and, particularly, when the writ, already stood, to a great extent, executed by evicting partly the persons in occupation of the decretal property and the articles lying thereon.

5. Opposing the submissions, so made on behalf of the petitioners, Mr. A.K. Bhowmik, learned Senior counsel, has submitted that Order 21, Rule 97 enables even a stranger to a decree to make application in an execution proceeding seeking adjudication on the question as to whether he is liable to be evicted from the suit property on the strength of a decree, which has been passed without adjudication of his rights, if any, to remain in possession of the decretal property.

6. The moot question, therefore, which falls for determination, is this: Whether a third party, who claims to be in possession of a decretal property as a tenant or co-tenant, can resist execution of a decree of eviction if he was not a party thereto on the ground that the decree would, if executed, oust him from the decretal property and, if so, whether such an application would fall within the ambit of the provisions of Order 21, Rule 97 of the Code?

7. While considering the question posed above, what needs to be noted is that prior to the CPC (Amendment) Act, 1976, the only remedy available to a person, who was not a party to a decree, lied in instituting a separate suit if he had to resist the execution of a decree, whereby he was sought to be evicted, though he was not a party to the decree. This elaborate and time-consuming procedure has been done away with by making suitable changes in the provisions of Order 21.

8. It needs to be pointed out that Order 21, with help of Rules 97,98,99,100 and 101, prescribe a complete mechanism for re-solving all disputes pertaining to execution of decree for possession obtained by a decree-holder. The remedy of a person, who is dispossessed from a property in execution of a decree for possession, lies in making appropriate application under Order 21, Rule 99 and if such an application is made, all questions, according to Rule 101, arising between the parties, are required to be adjudicated upon and decided by the executing court itself and not by way of a separate suit. No wonder, therefore, that the order adjudicating the rights of the parties under Rule 100 has, in the light of the provisions of Rule 103, the force of a decree. Rule 97, on the other hand, envisages a situation, where the holder of a decree for possession of an immovable property or the purchaser of any such property, sold in execution of a decree, is resisted or obstructed by any person in obtaining possession of the property. It is not disputed before me that in such circumstances, the decree-holder can make an application under Order 21, Rule 97 and this application has to be decided in accordance with the procedure prescribed by Rule 98 and that to such a proceeding, the provisions of Rule 100 also apply. It is for this reason that Order 21, Rule 103 makes it also clear that decision on an application, made under Rule 98, would have the force of a decree.

9. The question, now is this : whether a person, who is stranger to a decree for possession of an immovable property, can offer resistance to the execution of such a

decree by making an application, in the executing court, seeking proper adjudication of his rights to remain in possession of the decretal property? The answer to this question is no longer res integra. A catena of decisions from the Apex Court has settled this question. Reference may be made to [Brahmdeo Chaudhary, Adv. Vs. Rishikesh Prasad Jaiswal and another,](#) , [Shreenath and Another Vs. Rajesh and Others,](#) , [Tanzeem-e-Sufia Vs. Bibi Haliman and Others,](#) , Ashan Devi and Anr. v. Phulwasi Devi and Ors. AIR 2004 SC 511 and [Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd. and Others,](#)

10. In Brahamadeo Chaudhary (supra), the Apex Court has pointed out that Order 21, Rule 97 enables "any person" to make an application to the Court by whom the decree is sought to be executed if such person has reasons to obstruct or resist the decree for possession of such a property. In other words, for a person, who is stranger to a decree for possession of an immovable property, it is not necessary to wait for his dispossession from such a property in order to enable him to make an application for adjudication of his rights to remain in possession of the decretal property, notwithstanding the fact that the decree for possession of such a property has already been passed.

11. By making provisions, as contained in Rule 97, the legislature has dispensed with the requirement of filing a separate suit and has introduced an adjudicatory process for determination of rights, title and interest in the immovable property under execution and finality to such a proceeding has also been accorded, for, an order passed, under the provisions of Order 21, Rule 97, would have, in the light of the provisions of Order 21, Rule 103, the force of a decree.

12. What crystallizes from the above discussion is that when a person makes an application in the execution court stating to the effect that he, being not bound by the decree of recovery of possession, has a right to resist the decree, such a person falls within the meaning of the expression "any person", appearing in Order 21, Rule 97, and such an application, if filed, needs to be adjudicated upon in terms of the provisions of Order 21, Rule 97 read with Rules 98,101,102 and 103.

13. In the backdrop of the law as discussed above, when I turn to the case at hand, what transpires is that respondent No. 2 herein had made an application, as already indicated hereinabove, in the execution proceeding, under Order 21, Rule 97, stating to the effect, inter alia, that though he was in the possession of the decretal property, he had not been made a party to the suit and that the decree was executable against him and if the writ for delivery of possession was not interfered with, he would be ousted from the possession of the decretal property. Respondent No. 2 had also made an application seeking stay of the execution proceeding pending disposal of his application made under Order 21, Rule 97. Thereafter, respondent No. 2 had made application, u/s 24, as indicated hereinabove, seeking transfer of the execution proceeding to some other court of competent jurisdiction on the ground that the learned executing court had not even registered the application filed by him under Order 21, Rule 97 nor was there any order passed, on the said

application, and/or on the application for stay made by him in the execution proceeding. Whether the allegations, so made by respondent No. 2, were or were not true is not material. What is material is that in such circumstances, the learned District Judge had no option, but to assume that the averments, made in the application for transfer, were true and, acting on such assumption, it was within his powers to pass appropriate order (s) pending disposal of the application seeking transfer of the execution proceeding to some other court of competent jurisdiction. Obviously, when the transfer application could not have been disposed of without affording any opportunity of hearing to the decree-holders-petitioners and, at the same time, allowing execution of the decree to be completed and satisfied would have frustrated the application for transfer made u/s 24, the learned District Judge had no option, but to pass appropriate order (s) for stay of the execution proceeding and/or for recall of the writ if the same had already been issued. This is precisely what the learned District Judge has done by the impugned order and this order, undoubtedly, falls within the inherent powers of a civil court as embodied in Section 151 of the Code.

14. Supervisory jurisdiction, under Article 227 of the Constitution of India, is available, where a Court, which has jurisdiction, refuses to exercise jurisdiction or where a Court fails to exercise jurisdiction, where it has jurisdiction, or where the jurisdiction, though available, is exercised in a manner not permitted by law or against all principles of natural justice occasioning thereby grave injustice. (See [Surya Dev Rai Vs. Ram Chander Rai and Others](#),).

15. In the present case, in the light of the discussions held above, it is more than abundantly clear that the learned District Judge, in the facts and circumstances of the present case, was competent to pass the order in the manner as had been passed by him. The impugned order, therefore, needs no interference and no writ application, made under Article 227 of the Constitution of India, can be sustained against such an order.

16. Having concluded what is indicated above, what, now, needs to be noted is that as far as respondent No. 1 is concerned, he has not objected to the execution of the decree, in question, and, hence, the transfer application, made in the present case, can very well be heard. Lest delay in disposal of the transfer application frustrate the decree, it is hereby directed that on appearance of the parties on the date already fixed by the learned District Judge, the matter shall be heard and disposed of expeditiously and, preferably, within a week from the next date of appearance of the parties fixed in the transfer proceeding.

With the above observations and directions, this revision shall stand disposed of.