

Jonaram Das Vs Md. Abdul Kadir and Others

Court: Gauhati High Court

Date of Decision: Aug. 9, 2006

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 20 Rule 9, Order 7 Rule 3

Citation: AIR 2007 Guw 18 : (2007) 2 GLR 61

Hon'ble Judges: H.N. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

H.N. Sarma, J.

This petition raises a short but common problem faced by the executing Court In execution of an ejectment decree In respect of Immovable property. The petitioner in this case suffered by an ejectment decree dated 19.2.98 (sic) passed by the Civil Judge (Junior

Division) No. 1, Nagaon in TS No. 175/1993.

2. The aforesaid decree was passed in the suit filed by the plaintiff/respondent and was affirmed by the learned appellate Court leading to its

finality. The suit property as described in the Schedule to the plaint is mentioned in the decree being landed property measuring 1 B 2 K 8 L

covered by Dag No. 57, KP Patta No. 57 and a further area of land measuring 1 B 4 K 18 L covered by Dag No. 73, P Patta No. 58 and 1 B 1

K covered by Dag No. 74 of Nizsahar Mouza, Kissamat Morikolong in total area 4 B 3 K 6 L, bounded by North Lutfur Rahman, South-Idrls

All and plaintiff Abdul Kader, East-Morikolong LP School and Dhanai Das and West-Land of the plaintiff.

3. The aforesaid decree was put into execution by the decree-holder wherein the Title Execution Case No. 13 of 2001 was registered. Writ of

delivery of possession of the decretal property in favour of the decree-holder having been issued, the bailiff of the Court along with revenue

officials went to the field and executed the decree on 29-4-2003 according to the boundary described in the decree. The said decree could be

executed, as the property is identifiable as per boundary given in the schedule of the decree and as demarcated by the Lat Mondal. After execution

of the decree, the bailiff of the Court also submitted the necessary report, which was duly accepted by the learned Executing Court.

4. The judgment-debtor, after execution of the decree filed a written objection against the report of the Nazir stating the execution of the decree. In

the said objection a grievance was made by the judgment-debtor that in fact the Dag No. 57 and Patta No. 57 do not cover a part of the decretal

land and the decree was executed without confirming the said position. However, the judgment-debtor has not raised any objection regarding the

boundary of the decretal land. The decree-holder filed reply to objection filed by the judgment-debtor and the learned Executing Court enquired

into the matter and during such enquiry, the evidences of the concerned Lat Mondal, Nazir and the judgment-debtor were recorded. After hearing

the matter on completion of the enquiry, the learned Executing Court vide impugned order dated 19-5-2004 rejected the allegation of the

judgment-debtor which is the subject-matter of challenge in this revision petition.

5. I have heard Mr. S.K. Borkataky, learned Counsel for the judgment-debtor/ petitioner and Mr. DC Mohanta, learned senior counsel for the

decree-holder/opposite party.

6. It is submitted by Mr. Barkataky that in fact the decree itself was wrongly drawn Up stating that a part of the decretal land falls under Dag No.

57 and Patta No. 57 although the land under the said Dag and Patta is not the subject-matter of the suit and without confirming the said position

the decree was wrongly executed by the bailiff of the Court and, therefore, the learned Executing Court has committed jurisdictional error in

accepting the report of the Nazir and by passing the impugned order dated 19-5-2004 by arriving at a wrong decision. The learned Counsel

further submits that without amending the decree, the same was not executable.

7. Mr. Mahanta, learned senior counsel, on the other hand, submits that the records of the case including the statements of the witnesses recorded

during the enquiry into the allegation made by the judgment-debtor disclose that the decree was executed as per the boundary of the suit land and

there is no illegality or irregularity in executing the decree in such manner by referring to the boundary described in the schedule to the decree and

the allegation of the judgment-debtor is baseless and untenable in law. I have given my anxious consideration to the submission made by the learned

Counsels and also perused the connected records available before me.

8. Order 7, Rule 3, CPC, provides that where the subject-matter of the suit is immovable property, the plaint shall contain a description of the

property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint

shall specify such boundaries or numbers. Order 20, Rule 9, CPC provides where the subject matter of the suit is immovable property, the decree

shall contain the description of such property sufficient to identify the same and where such property can be identified by boundaries or by numbers

in a record of settlement or survey, the same shall specify such boundaries or numbers. A decree of immovable property is to be executed in terms

of Order 21, Rule 35, CPC.

9. The aforesaid provisions of Order 7, Rule 3, CPC, and Order 20, Rule 9, CPC, makes it clear that in a suit pertaining to immovable property

the plaint as well as the decree shall contain description of such property sufficiently to identify the same and where such property can be identified

by boundary such boundary shall be provided including the number of settlement or survey which may also be used to identify the suit property.

For identifying a suit property by its boundary or by numbers of revenue records or settlement or survey are all alternative mode of description to

be given in the plaint, on the basis of which the decree is drawn up. If in either of the ways the decretal property is identifiable, the decree is to be

executed in terms of Order 20, Rule 9, CPC.

10. In the instant case, the defendant decree-holder contested the suit by filing written statements without controverting the boundary given in the

schedule of the plaint and accepted the same all-through out and the objection was raised only after execution of the decree. The reports of the

Nazir as well as the enquiry so conducted by the learned Executing Court disclose that the decree was executed in terms of the boundary

described in the plaint. In fact, neither in the objection filed by the petitioner at the initial stage nor even at the later stage of the proceeding he has

challenged that the boundary of the suit property described in the plaint is different from that of the boundary described in the schedule to the

decree. The consequence of such silence of the judgment-debtor is that the property which is the subject-matter of the suit falls within the

boundary as provided in the decree.

11. Mr. Mohanta in support of his contentions placed reliance on the decision of this Court reported in AIR 1977 GAU 285 , wherein the Hon"ble

Lahiri, J., as his Lordship then was, inter alia, held that since the description of the land by its boundaries sufficiently identified it, the discrepancy of

the area is not material. The decision of the Apex Court referred in Sheodhyan Singh and Others Vs. Musammat Sanichara Kuer and Others, ,

also highlights the legal position. The Apex Court in the said case at paragraph 7 held as follows:

7. We are of opinion that the present case is analogous to a case of mis-description. As already pointed out the area, the khata number and the

boundaries all refer to plot No. 1060 and what has happened is that in writing the plot number, one zero has been missed and 1060 has become

160. It is also important to remember that there is no plot bearing No. 160 in khata No. 97. In these circumstances we are of opinion that the High

Court was right in holding that this is a case of mis-description only and that the identity of the property sold is well established, namely, that it is

plot No. 1060. The matter may have been different if no boundaries had been given in the final decree for sale as well as in the sale certificate and

only the plot number was mentioned. But where we have both the boundaries and the plot number and the circumstances are as in this case, the

mistake in the plot number must be treated as a mere mis-description which does not affect the identity of the property sold. The contention of the

appellants therefore with respect to this plot must fall.

That apart, the ratio of decision rendered by the Apex Court reported in Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, also go

to support the same view.

12. A conjoint reading of Order 7, Rule 3, CPC and Order 20, Rule 9, CPC, in the light of interpretations given by the Apex Court makes it clear

that in a suit relating to immovable property, the plaint must disclose the identity of the property without any ambiguity which would be reflected in

the eventual decree that may be passed in the suit. This is necessary so that the decree can be executed the suit property being sufficiently

identifiable by way of boundary on other description as given in the plaint and the decree and there is no variance of the boundary given in the

plaint and in decree. In the instant case, the decree was executed with reference to the boundary as mentioned in the schedule to the plaint and the

decree. The defendant has not controverted or disputed the said boundary at any point of time and raised objection only after execution procedure

is complete by giving delivery of possession of the decretal land to the decree-holder.

13. In view of the aforesaid discussions, I do not find that the learned Executing Court has committed any jurisdictional error in executing the

decree with reference to specific and identifiable boundary given in the plaint. Accordingly, this revision petition stands dismissed. Subject to,

however, directing the parties to bear their own costs. Revision dismissed.