

Arvind Kumar Verma Vs State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: Sept. 20, 2013

Citation: (2013) 4 JLJR 456

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Advocate: Nehala Sharmin, for the Appellant; Ayush Aditya, S. Shekhar and A. Verma, for the Respondent

Final Decision: Dismissed

Judgement

Prashant Kumar, J.

This writ application has been filed for quashing the order dated 27.7.2006 passed by Sub-Judge-I, Dumka in Title

Execution Case No. 2/1994, whereby and whereunder he rejected the rejoinder filed by petitioner/judgment debtor and allowed the application of

respondent/decreed holder and issued order for delivery of possession in favour of decree holder. Respondent No. 2 has filed a suit bearing Title

Eviction Suit No. 24/79 against the petitioner and others for their eviction from the suit property, described in Schedule-"A" of the plaint and also

for realization of arrears of rent. It appears that aforesaid suit was decreed in favour of plaintiff/respondent No. 2. Thereafter, petitioner and others

filed an appeal before the Additional District Judge, Dumka which was dismissed. Then, petitioner filed Second Appeal in this Court, which was

also dismissed. It then appears that respondent No. 2 filed an application for execution of the decree, which was registered as Title Execution

Case No. 2/94. During the pendency of the said Execution Case, petitioner/judgment debtor had filed certified copy of khasara panji of Dumka

Anchal relating to Plot No. 1435/13 on 8.4.2005 and stated that said lands is gairmajarua khas land of the State Government. It appears that

thereafter, respondent No. 2 filed an application on 12.4.2005 wherein she stated that petitioner/judgment debtor had filed certified copy of

Khasara with an intention to create confusion and to linger the execution proceeding. Accordingly, respondent No. 2 prayed that writ for delivery

of possession be issued and possession be given to the plaintiff/respondent No. 2 by the process of Court.

2. A rejoinder to the said application filed by the petitioner/judgment debtor in which they stated that decree holder has got a ambiguous and

defective decree in which neither area nor specific boundary of the property mentioned. It is stated that in the plaint plaintiff stated that the suit

property stands on Holding No. 142/55 of Ward No. 9, but from perusal of Municipal Register, it will transpire that Holding No. 142 of Ward

No. 9 recorded in the name of Ramanand Sah and Holding No. 55 belongs to Professor Srichand Thakur. The land under plot No. 1435/2033 is

still recorded as Gairmajarua Khas. The petitioner/judgment debtor further stated that they are not residing in any part (sic-- of?) plot No.

1435/2033, rather they are residing on the plot No. 324 of Mauza-Dumka, which is the property of Dr. Rajendra Prasad, 1st President of India.

The petitioner/judgment debtor further stated that decree holder has a greedy eye over the land of Dr. Rajendra Prasad, thus, by playing fraud and

misrepresentation, wants to get the delivery of possession of the said land by evicting petitioner. Accordingly, it is prayed that Title Execution. Case

No. 2/94 be dismissed and the application of respondent No. 2 dated 12.4.2005 be rejected.

3. Learned Sub-Judge, after considering the application filed by the parties and also hearing their arguments, concluded that decree holder is

entitled for issuance of writ of delivery of possession with respect to the properties mentioned in the decree. Accordingly, he rejected the rejoinder

filed by the petitioner/judgment debtor and allowed the application filed by decree holder (respondent No. 2) and issued writ for delivery of

possession vide his order dated 27.7.2006.

4. Mrs. Nehala Sharmin, learned counsel appearing for the petitioner submits that in the instant case, decree issued by court concern cannot be

executed because same is ambiguous and defective, as neither area nor specific boundary of suit property mentioned in it. She further submits that,

in fact, in the garb of decree, respondents wants to evict petitioner/judgment debtor from plot No. 324 of Mauza-Dumka which belongs to Dr.

Rajendra Prasad, 1st President of India. Accordingly, she submits that it is necessary for the executing court to decide aforesaid dispute and/or

objection raised by the judgment debtor (petitioner) according to the provisions of Section 47 of the Code of Civil Procedure. Thus, she submits

that impugned order is liable to be set aside because executing court had issued writ for delivery of possession without deciding the objection

raised by the judgment debtor (petitioner).

5. On the other hand, Mr. Ayush Aditya, learned counsel for respondent No. 2 submits that the decree passed by the learned court below in Title

Eviction Suit No. 24/1979 relates to the properties mentioned in schedule of the plaint. There is no vagueness and/or confusion in it. He further

submits that petitioner/judgment debtor has challenged the said decree up to the High Court and lost. Under the said circumstance, at the stage of

execution, one of the judgment debtor (petitioner) is raising a new objection in execution of decree, which ought to have been taken by him during

the trial and/or before the Appellate Court. He submits that the executing court has no jurisdiction to go beyond the decree and decide any dispute.

Accordingly, he submits that learned court below had rightly rejected the rejoinder filed by the petitioner/judgment debtor and issued order for

delivery of possession of the properties described in the decree.

6. Having heard the submissions, I have gone through the records of the case.

7. It is an admitted position that petitioner/judgment debtor had lost up to Second Appeal. It appears that petitioner/judgment debtor in his

rejoinder made a new case and said that decree passed by the trial court in Title Eviction Suit No. 24/1979 is not executable, because same is

ambiguous and defective as the area and boundary of the properties has not been mentioned in it. The court below on carefully consideration of the

objection raised by the petitioner/judgment debtor rejected the same and stated that plaintiff/decreed holder prays for delivery of possession with

respect to same property which are mentioned in the decree. I find that learned Executing Court had rightly rejected the application of the

petitioner.

8. It has been held by the Hon"ble Supreme Court in Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman and Others, that:--

A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor,

and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or

revision, a decree even if it be erroneous is still binding between the parties.

9. In Rafique Bibi (D) by Lrs. Vs. Sayed Waliuddin (D) by Lrs. and Others, their Lordships held that:--

A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of

the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity

of procedure, cannot be termed in executable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a

duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of

competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

10. In view of the aforesaid law laid down by their Lordships of Supreme Court, the objections raised by petitioner/judgment debtor have no leg

to stand. They have nowhere stated in their rejoinder that the decree passed by the trial court is without jurisdiction.
From perusal of decree

(Annexure-1), it is clear that the decree was passed for evicting petitioner/judgment debtor from "Schedule-A" property, which is as follows:--

Khapraposh brick built house, with latrine, well and all other construction comprised within Municipal Holding No. 142/55 of Ward No. 9 (new)

in Dumka Town and standing on plot No. 1435/2033 of Dumka Town P.S.-Dumka Town Sub. and District-Dumka, Santhal Parganas.

11. From perusal of the impugned order, I find that learned court below issued writ for delivery of possession of the properties mentioned in the

decree. Under the said circumstance, since the decree had become final, it is imperative for the petitioner/judgment debtor to obey the command

of the decree. It appears that in the instant case, petitioner/judgment debtor is raising objection against the decree, with a view to delay the delivery

of possession. Thus, I conclude that learned court below rightly rejected the rejoinder of the petitioner/judgment debtor. In the result, I find no

merit in this writ application, the same is, accordingly, dismissed. I direct the court below to give delivery of possession of the properties mentioned

in the decree, within one month from the date of receipt of this order.