

(2005) 06 JH CK 0011
Jharkhand High Court
Case No: Writ Petition (C) No. 5872 of 2003

Shanti Devi Prasad
and Another

APPELLANT

Vs

Pratibha Singh and
Another

RESPONDENT

Date of Decision: June 15, 2005

Citation: (2005) 2 BLJR 1626 : (2005) 3 JCR 322

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Vikash Kishore Prasad, for the Appellant; A.K. Sahani, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

This writ petition has been preferred by the petitioners to quash the order dated 23rd June, 2003 passed by Shri A.R.K. Sinha, Sub-Judge VI, Ranchi in Execution Case No. 1/83(A) read with order dated 10th November, 2003 passed by the said Execution Court. Further prayer has been made to direct the Court below to act in accordance with law and as per the order and decree of the Supreme Court of India.

2. Brief fact of the case as appears is that the respondent Smt. Pratibha Singh entered into an agreement with petitioner Smt. Shanti Devi Prasad on 3rd November, 1976/4th September, 1979 to sell 8 (eight) Kathas of land in Hinoo, P.S. Doranda, District Ranchi out of her total holdings under her two sale deeds Nos. 11032 of 1975 and 7358 of 1976.

On 17th September, 1981, petitioners filed a Title Suit No. 125 of 1981 against defendant Smt. Pratibha Singh and others for specific performance of contract. The said suit was decreed in favour of petitioners on 18th October, 1982, followed by an Execution Case No. 1/83(A), preferred by petitioners for execution of the decree. Interim order of stay was initially passed by the appellate Court and then by the

Supreme Court which was finally vacated on 29th November, 2002.

In the meantime, First Appeal No. 27/83(R) preferred by respondent Nos. 1 and 2 was dismissed by the High Court on 4th April, 1990. Respondent Nos. 1 and 2 thereafter moved before the High Court in L.P.A. No. 47/90(R), which was also dismissed by a Division Bench of High Court. Being aggrieved, respondent Nos. 1 and 2 moved before the Supreme Court in SLP No. 5061 of 1990, which was converted into Civil Appeal No. 3151/92 and was finally dismissed on 23rd December, 1995. A Review Petition No. 63/96, as preferred by the respondents, was also faced with the same fate and dismissed by the Supreme Court on 7th February, 1996. Thereby, the judgment and decree passed by the Court below for specific performance against the defendants-respondent Nos. 1 and 2 achieved finality.

In the execution proceeding, parties raised objections from time to time, and most of which were rejected. Ultimately, a sale deed on behalf of the judgment debtors was executed by the Court below on 23rd December, 1998, which also reached its finality, having registered on the direction of the High Court dated 17th October, 2000 passed in CWJC No. 2588 of 2000 (R). Civil Revision Applications, Miscellaneous Appeals, Letter Patent Appeal, Special Leave Petitions before the Supreme Court and Civil Review applications before the Supreme Court were filed by the judgment debtors i.e. respondent Nos. 1 and 2, all of which were dismissed, between 14th January, 1999 and 2nd July, 2001.

Against the order of dismissal of two review applications i.e. Review Petition Nos. 15/01 and 61/01 (by common order dated 27th November, 2001), respondent Nos. 1 and 2 preferred SLP Nos. 7144-7145/2002. In those cases, the Supreme Court stayed execution proceeding. Leave was granted and they were converted into Civil Appeal Nos. 7891-7892/2002 and both the appeals were disposed of by Supreme Court by its judgment and decree dated 29th November, 2002, giving detailed directions to the Executing Court for identification of land and delivery of possession of 8 (eight) Kathas of suit land as per the agreement and judgment decree. The interim order of stay of execution proceeding was vacated.

The Supreme Court in its judgment and decree aforesaid gave the following direction,--

"(i) (a) The Executing Court, shall, after going through the record of the case and after affording the parties an opportunity of hearing, decide upon the correctness of the map filed by the plaintiff-decree holders during the execution proceedings and presently forming part of the Court sale deed dated 23.12.1998. If the Executing Court finds that the map forming part of the sale deed, is not a correct map or needs to be rectified either wholly or in part, that shall be done and the map correctly drawn up under the orders of the Court shall then form part of the sale deed. The necessary deed of rectification shall be executed and registered under the orders of the Court. In that eventuality, the deed of sale dated 23.12.1998 shall take

effect as rectified under the orders of the Executing Court.

(b) Thereafter possession over the property equivalent to 8 kathas of land as described in the sale deed executed in execution of the decree and as rectified in the event of an occasion arising for the purpose, shall be delivered by the judgment-debtors to the decree holders, if necessary, through warrant of delivery of possession.

(c) It would be in the discretion of the Executing Court to take such steps as may be necessary for fixing the identity of the property. The Executing Court may take assistance from the previous documents of title, the Revenue Records and/or may have a survey carried out by appointing a competent Commission. Nevertheless, the Court shall see that the decree holder gets the property as per agreement to sell and as decreed.

(ii) The amount of Rs. 5,000/-(Rupees five thousand only) shall be deposited by the decree holders for payment to the judgment-debtors within such time as may be appointed by the Executing Court.

(iii) The direction numbers (i) and (ii) abovesaid are independent of each other and not interdependent. Each party must carry out its own obligation without insisting on compliance by the other as a condition precedent .

(iv) In view of the delay that has already taken place, it is directed that the hearing of the execution shall be expedited and concluded as early as possible, preferably within a period of four months from the date of communication of this order."

Thereafter, a Pleader Commissioner was appointed who submitted report on 24th May, 2003 before the Executing Court. On 27th May, 2003, a petition was filed on behalf of the judgment debtor and on 10th June, 2003, a supplementary objection petition was also filed. A counter reply thereof was filed by the decree holder. Learned Court below thereafter passed the impugned order dated 23rd June, 2003 in Execution Case No. 1/83(A) identifying the land purported to be the suit property. According to the petitioners the land as identified as the suit property is not as per the agreement and the decree passed by the Supreme Court. The identification is vague, boundaries having not been shown therein.

3. Mr. A.K. Sahani, learned counsel for the respondents submitted that the description of the land, as shown in the agreement, is correct, but the description of the land, as shown in the sale deed, is incorrect. Similarly, the description in the Schedule of the Complaint is correct, but the difficulty arose there being no map attached to the agreement. The description of the land as was shown in the map attached with the sale deed is incorrect.

4. Mr. V.K. Prasad, learned counsel for the petitioners, has also accepted this fact.

5. The Supreme Court had noticed the fact that the map forming part of the sale deed may not be correct. For the said reason, in its judgment and decree, the Supreme Court left it open to the Executing Court and observed that if the said Court finds that the map forming part of the sale deed is not a correct map or needs to be rectified either wholly, or in part, that shall be done and the map correctly drawn up under the orders of the Court, shall then form part of the sale deed. The necessary deed of rectification was allowed to be executed and registered under the orders of the Court. In that eventuality, it was observed that the sale deed dated 23rd December, 1998 shall take effect as rectified under the orders of the Executing Court.

6. The Court below accepted that the map forming part of the Court sale deed was incorrect, as evident from the following observations of the Executing Court.

"So far as first part of direction given in direction No. (1) is concerned, I have heard learned counsel of both the parties. Both the parties have also appeared in person and pleaded their claim on the point whether map forming part of the sale deed is correct or not. Both the argued before me and concluded that map forming part of the sale deed is not correct. I have also gone through the map attached with the Court sale deed dated 23.12.1998 and map attached with the sale deed i.e. sale deed No. 7358/76 through which judgment debtors purchased the land, it shows that sub plot number 595/I lies south of sub plot No. 595/II. Of course no sub plot number has been mentioned in the sale deed No. 5906 dated 5.12.1955. But in subsequent sale deeds through which judgment debtors purchased the land plot No. 595 has been shown in the map as subplot No. 595/I. In my opinion, this has been done before executing two sale deeds to identify the land. But map attached with the Court sale deed as 595/II and vice-versa. And accordingly, 6 kathas (108"x40") land has been shown in Court map from sub plot No. 595/I which is in fact plot No. 595/II in the map attached with two sale deeds through which judgment debtors purchased the land. And so map attached with Court sale deed is contrary to agreemental land. And so in my view map forming part of Court sale deed is not correct map."

7. So far as the Map drawn by Pleader Commissioner is concerned, the learned Executing Court noticed the submissions, descriptions of the land, as shown in the agreement, sale deed and the report as also the map submitted by the Pleader Commissioner and it also come to a definite conclusion that the map drawn by the Pleader Commissioner was incorrect and observed, as follows :

"...In view of the discussion made above it can be safely said that report submitted and map drawn by Pleader Commissioner is not correct. Hence I hereby reject the report and map drawn by Pleader Commissioner...."

8. There appears to be some discrepancies with regard to measurement of the land, as shown in the agreement, sale deed and the map. For the said reason, the map

was to be preferred on the basis of the Court sale deed, as was ordered by the Supreme Court and quoted above.

9. In the aforesaid background, if the decree holder took plea to prepare map on the basis of the area of the land, as shown in the sale deed, I find no justification to reject such plea. The ground shown to reject the submission of the decree holder in respect of area of land being contrary to the judgment and decree rendered by the Supreme Court, the same cannot be upheld.

10. As the matter requires reconsideration, the impugned orders dated 23rd June, 2003 and 10th November, 2003 passed by the learned Sub-Judge VI at Ranchi in Execution Case No. 01/83(A), are set aside and the case is remitted with direction to the Court below to identify the suit land in terms with the judgment and decree passed by the Supreme Court. If so necessary, the Court will decide the correctness of the map filed by the plaintiff-decree holder during the execution proceeding, which is part of the Court sale deed dated 23rd December, 1998 and will rectify the map, forming part of the sale deed after following the procedure, as laid down by the Supreme Court in its judgment and decree, as discussed above. It will be more desirable if one Pleader Commissioner is asked to make necessary enquiry and submit report and map.

11. An early action should be taken by the Court below to ensure quick disposal of the execution case after hearing both the parties.

12. The writ petition is allowed with aforesaid observations and directions. However, there shall be no order, as to costs.