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**(2009) 03 MP CK 0020**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** None

Dilip Kumar

APPELLANT

Vs

Vijay Bahadur Singh and Others

RESPONDENT

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**Date of Decision:** March 17, 2009

**Acts Referred:**

- Transfer of Property Act, 1882 - Section 52

**Citation:** AIR 2009 MP 165 : (2009) ILR (MP) 1408 : (2009) 2 JLJ 276 : (2009) 4 MPHT 326 : (2010) 1 MPJR 211 : (2009) 3 MPJR 118 : (2009) 2 MPLJ 587

**Hon'ble Judges:** P.K. Jaiswal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

P.K. Jaiswal, J.

Heard on admission.

This appeal is filed by the objector against the judgment and order dated 8-2-2008 passed by the Second Additional District Judge (FTC) Ganj Basoda, District Vidisha, in Civil Appeal No. 25-A/08, by the said order, the Second Additional District Judge dismissed the appeal filed by the appellant and affirmed the order dated 17-9-2007 passed by the Executing Court, Ganj Basoda, in Execution Case No. 20-A/63x94, whereby objection of the appellant was rejected.

Short facts of the case are that Maan Singh, father of respondent Nos. 1 and 2 and husband of respondent No. 3 filed a suit bearing Civil Suit No. 20A/63x94 against Pratap S/o Hukum Singh and State of Madhya Pradesh through Collector, Vidisha, in the Court of Civil Judge Class-II, Basoda, which was decreed on 11-11-1965. Trial Court directed that defendant No. 1 Pratap Singh shall hand over the possession of the disputed land (Survey Numbers 143, 146, 152, 164, 169, 185, 186, 188 and 205 situated in Village Madiya Peeniya, Tahsil Basoda, District Vidisha) within one month

from the date of the judgment. In case of default of handing over possession as above, the defendant No. 1 shall pay mesne profits to the plaintiffs @ 504.70 Paise, which is ten times of the land revenue payable as per Ex. D/7. In view of the provisions of Section 202 (7) and 250 (6) of the M. P. Land Revenue Code, 1959. Trial Court also declared that the plaintiff is Bhumiswami of the disputed land.

Defendant No. 1 challenged the said judgment and decree before the Additional Judge Ganj Basoda to the Court of District Judge, Vidisha, by filing Civil Appeal No. 27-A/93, which was dismissed on 22-7-1994.

On the death of original defendant No. 1 Pratap Singh, his legal heirs challenged the judgment and decree of the Courts below by filing SA No. 121/94, which was also dismissed by this Court on 18-1-1999.

Devi Singh legal heir of Pratap Singh challenged the order dated 18-1-1999 passed in SA No. 121/94 by filing Civil Appeal No. 6065/00 before the Supreme Court of India. The Apex Court dismissed the said appeal vide order dated 1-5-2007 by holding that they see no reason to interfere with well merited concurrent finding of facts recorded by all the Courts below. The appeal being devoid of merit was accordingly dismissed.

Appellant-objector during the pendency of Civil Appeal No. 27-A/93 before the Additional District Judge, Ganj Basoda, entered into an agreement on 30-6-1989 with Smt. Narbadi Bai widow of Pratap Singh in respect of an area of 1.453 hectares of Survey Numbers 164 and 169 for a consideration of Rs. 50,000/- and thereafter on 17-7-1989, she executed a sale deed in his favour. Devi Singh and Omkar Singh, who are sons of Pratap Singh, gave their consent to her mother for execution of the said sale deed.

Objector after execution of the sale deed executed a registered consent letter with Maan Singh S/o Mannu Singh Rajput on 15-3-1990. On the basis of the consent letter and sale deed, objector filed an objection before the Executing Court vide IA No. 11/07 on 1-8-2007. This objector during the pendency of Civil Appeal No. 27-A/93 purchased the property in question knowing well that the trial Court in the year 1965 passed a decree against Pratap Singh and after the death of original defendant Pratap Singh, his widow Smt. Narbadi Bai was brought on record a legal representative and after her death her son and three daughters, namely, Devi Singh, Sahadara Bai, Parvati Bai, and Girja Bai were brought on record. The said legal heirs challenged the judgment and decree by filing SA No. 121/94, which was dismissed by this Court on 18-1-1999. After dismissal of the second appeal, Devi Singh, one of the legal heir of Pratap Singh, challenged the said judgment by filing an appeal before the Apex Court, which is evident from the order dated 1-5-2007 passed by the Apex Court.

Objection was filed on the ground that after execution of the sale deed dated 17-7-1989 from Smt. Narbadi Bai, the decree holder Maan Singh executed a consent

deed by which he gave his consent in respect of execution of the sale deed dated 17-7-1989 and he has no objection in future in respect of the land of Survey Numbers 164 and 169. By the said consent, he relinquished his right and there is adjustment with regard to the land, which was purchased by the appellant objector, therefore, execution proceedings to that extent against the objector is not maintainable and prayed for its dismissal.

The respondent Nos. 1, 2 and 3, who are sons of decree holder Maan Singh, filed their reply and contended that objector Dilip had knowledge about pendency of the Civil Appeal and judgment and decree dated 11-11-1965 against Pratap Singh, husband of Narbadi Bai. The objector purchased the property from the judgment debtor during the pendency of the litigation has no independent right to property to resist, obstruct or object execution of a decree. The doctrine of lis pendens would apply to the transaction in question and prayed for dismissal of the objection. Respondent Nos. 1 and 2 decree holder also denied about execution of the consent deed by Maan Singh and contended that they have no knowledge about consent deed, which was said to be executed during the pendency of the suit and therefore the said sale deed is void. With the above, they prayed for dismissal of the objection.

The Executing Court vide order dated 17-9-2007 rejected the objection by holding that the Order 21, Rule 29 of CPC has no relevance to cases wherein transfer of property has been effected by the judgment-debtor to a third party during the pendency of proceedings. The appellant-objector purchased the property during the pendency of proceedings and therefore the doctrine of lis pendens would apply to the transaction in question and rejected the objection of the appellant.

The appellant challenged the said order dated 17-9-2007 by filing First Appeal before the lower appellate Court. The lower appellate Court by the impugned judgment dated 6-2-2008 dismissed the appeal and affirmed the order passed by the Executing Court on 17-9-2007.

Learned Counsel for the appellant drew my attention to the consent letter dated 15-3-1990 said to be executed by the decree holder during his lifetime in favour of the objector and sale deed dated 17-7-1989 issued by Smt. Narbadi Bai widow of the judgment debtor and submitted that when there is an adjustment by the registered document, then such document can be taken into consideration by the Executing Court and Courts below erred in not granting opportunity to lead evidence to the appellant and failed to consider the fact that Maan Singh, father of decree holder, has executed deed dated 15-3-1990 in favour of the appellant, whereby he had right, title and interest over the property and when the contents of the application were not specifically denied by the respondents, the fact as pleaded in the application is liable to be admitted under Order 6, Rules 4 and 5 of CPC and the Courts below committed error in dismissing the application.

On the other hand, the learned Counsel for the respondent Nos. 1 and 2 drew my attention to the reply of the said objection and submitted that the respondents very specifically denied about the execution of consent letter and also submitted that the sale deed was executed during the pendency of the proceedings on 17-7-1989 and objector for a period of 20 years did not file any application before the lower appellate Court nor he filed an application during the lifetime of Maan Singh and when the appeal of the appellant judgment debtor was dismissed by the Apex Court, he with a mala fide intention has filed this application to delay the proceedings and delivery of possession in pursuance to the decree, which was passed in the year 1965, i.e. on 11-11-1965. The appellant objector, who is a third party and purchased the property from the judgment debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Both the Courts below have not committed any legal error in dismissing the objection and prayed for dismissal of this second appeal.

Rules 97 to 106 of Order 21 of the Code deal with "resistance or obstruction to delivery of possession to decree holder or purchaser". Rule 97 enables the decree holder or auction purchaser to complain to executing Court if he/she is resisted or obstructed in obtaining possession of such property by "any person". The Court on receipt of such application will proceed to adjudicate it.

Rule 101 requires the Court to make full-fledged inquiry and determine all questions relating to right, title and interest in the property arising between the parties to the proceeding or their representatives. The Court will then pass an order upon such adjudication (Rules 98).

Rule 99 permits any person other than the judgment debtor who is dispossessed by the decree holder or auction purchaser to make an application to executing Court complaining such dispossession. The Court, on receipt of such application, will proceed to adjudicate it (Rule 100).

Rule 103 declares that an order made under Rule 98 or Rule 100 shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

102. Rules not applicable to transferee pendente lite.- Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property, by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment debtor is presumed to be aware of the proceedings before a Court of law. He should be careful before he purchases the property which is the subject matter of litigation. It recognizes the doctrine of *lis pendens* recognized by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee *pendente lite*, a decree holder will never be able to realize the fruits of his decree. Every time the decree holder seeks a direction from a Court to execute the decree, the judgment debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.

It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent Court. The doctrine of "*lis pendens*" prohibits a party from dealing with the property which is the subject matter of suit. "*Lis pendens*" itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee *pendente lite*. It declares that if the resistance is caused or obstruction is offered by a transferee *pendente lite* of the judgment debtor, he cannot seek benefit of Rules 98 or 100 of Order 21.

The Apex Court in the case of [Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another](#), has held that where the resistance is caused or obstruction is offered by a transferee *pendente lite*, the scope of adjudication is confined to a question whether he was a transferee during the pendency of a suit in which the decree was passed. Once the finding is in the affirmative, the executing Court must hold that he had no right to resist or obstruct and such person cannot seek protection from the executing Court. The Apex Court stated:

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing Court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee *pendente lite* of the judgment debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the execution Court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such

a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

Thus, purchasing the property from the judgment-debtor during the pendency of the suit has no independent right to property and to resist or obstruct or object to the execution of a decree. Resistance at the instance of transferee or judgment-debtor during the pendency of the proceedings cannot be said to be resistance or obstruction by a person in his own right and therefore is not entitled to get his claim adjudicated.

As already noted earlier, Civil Suit was instituted in the year 1963. The litigation was pending in respect of the property in question and the matter was subjudice. The appellant thereafter purchased the property from Smt. Narbadi Bai widow of the original defendant on 17-7-1989, i.e. during the pendency of Civil Appeal No. 27-A/93. It is also not in dispute that thereafter the lower appellate Court dismissed the appeal and affirmed the judgment and decree of the trial Court on 22-7-1994. The appellant, who entered into an agreement for purchase of the property in question on 30-6-1989, never intimated this fact nor filed any application before the lower appellate Court during the pendency of the first appeal, second appeal before this Court or before the Apex Court nor he during the lifetime of Maan Singh filed an application for adjustment of decree or dismissal of the appeal in respect of the property in question in view of the consent letter given by the decree-holder Maan Singh. In such a situation I am of the considered view that" the doctrine of lis pendens would apply to the transaction in question and the lower appellate Court was wholly right in dismissing the appeal of the appellant.

Rule 29 of Order 21, CPC deals with cases wherein a suit has been instituted by the judgment-debtor against the decree-holder and has no relevance to cases of lis pendens wherein transfer of property has been effected by the judgment-debtor to a third party during the pendency of the proceedings. The lower appellate Court, in my opinion, has rightly held that the appellant could not be said to be a "stranger" to the suit inasmuch as he was claiming right, title and interest through Smt. Narbadi Bai against whom the suit was pending. The appellant, therefore, be presumed to be aware of the litigation which was before a competent Court in the form of Civil Appeal No. 22A/93 instituted by Smt. Narbadi Bai and other legal heirs of Pratap Singh. Since the appellant is a purchaser pendente lite and as he has no right to offer resistance or cause obstruction and as his rights have not been crystallized in a decree, Rule 102 of Order 21 of the Code comes into operation and hence, he cannot resist execution during the pendency of the proceedings. The order passed by the Courts below cannot be said to be illegal, unlawful or otherwise contrary to law. No question of law, much less a substantial question of law is arising in this appeal and the appeal deserves to be dismissed.

The appeal filed by the appellant has no merit and is accordingly dismissed with costs. Counsel's fee Rs. 5,000/-.