
AIR 1925 Cal 1243 : 85 Ind. Cas. 1004

Calcutta High Court

Case No: None

Golam Nabi Chapawala

APPELLANT

Vs

F.W. Needham and
Others

RESPONDENT

Date of Decision: July 28, 1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 21 Rule 98, 115

Citation: AIR 1925 Cal 1243 : 85 Ind. Cas. 1004

Hon'ble Judges: B.B. Ghose, J

Bench: Division Bench

Judgement

B.B. Ghose, J.

This a case in which the petitioner applies, u/s 115, Civil P.C., for the revision of an order passed by the Munsif, Fourth

Court at Dacca. The case raises a question of some nicety. An order has been made against the petitioner under Order 21, Rule 98, Civil P.C.

under which the learned Munsif has directed that the decree-holders be put into khas possession of the decretal land including the land -which the

petitioner before this Court occupies as his bari and that his possession be removed, if he refuses to vacate the same. The contention on behalf of

the petitioner is that Rule 98 of Order 21 does not apply to his case, firstly because in fact he was not the judgment-debtor in the case; and

secondly, that it has not been found that he has been resisting the delivery of possession to the decree-holder at the instigation of the judgment

debtor. The second question that has been raised is that the decree which was one for possession of a certain piece of land does not include the

portion in dispute in these proceedings on which the petitioner before this Court has his bari.

2. With regard to the second question it is contended on behalf of the petitioner the learned Munsif ought not, in a summary proceeding like this, to

have gone into the question by reference to the boundaries given in the decree and upon the oral evidence adduced in the case, but ought to have

left the matter for decision in a separate suit. It is contended on behalf of the opposite party that the petitioner himself invited the Court below to

decide this question because he objected to the delivery of possession on the allegation that this plot of land was outside the decretal land. In my

judgment, when the question arises as to what is included in a decree in execution proceedings, the execution Court has got to go into the question

as to what was decreed, and the lower Court has followed the proper procedure in deciding the question. The finding of the learned Munsif is that

this disputed portion was included in the decree and I do not think that I can in revision interfere with that decision. Besides it seems to me that he

has duly considered the question from all points of view in coming to his conclusion.

3. The question there is whether a proper order was made by the learned Munsif under Rule 98 of Order 21, Civil P.C. The petitioner in this

Court, as I have already said, was not the judgment-debtor, but it has been found by the Court below that one Ibrahim Haji was one of the

judgment-debtors against whom, along with other persons, a suit for possession was brought in the year 1916. During the pendency of the suit

Ibrahim Haji transferred this parcel of land to one Fayzzannessa Bibi in the year 1911 and the petitioner purchased it again from Fayzzannessa Bibi

in the year 1919. The learned Munsif, therefore, considers that the petitioner having been a purchaser pendente lite is the representative of the

judgment-debtor, and so an order may be passed as against him under Rule 98, Order 21, Civil P.C. It is contended on behalf of the petitioner that

although Ibrahim Haji was one of the judgment debtors, he claimed this portion of the disputed land under a different title, and therefore, the

petitioner could not be in the position of a judgment-debtor because Ibrahim Haji was not the judgment debtor with regard to this dispute portion.

The question then turns upon this as to whether Ibrahim himself could have resisted delivery of possession of this bit of land in execution of the

decree obtained against him. Assuming that the finding of the learned Munsif is correct that this disputed plot of land was included in the decree, it

seems to be obvious that Ibrahim Haji could no have resisted the delivery of possession of this portion of land in execution of that decree. If that is

so, the question then remains whether the petitioner is a person, who is entitled to offer such resistance. It is a general principle of law that the

purchaser pendente lite is bound by the decree and such purchase cannot affect any rights obtained by the decree-holder under the decree of the

Court. This principle has been codified in Section 52 of the Transfer of Property Act, and it is also recognized in Rule 102, of Order 21, Civil P.C.

The position, therefore, is that the petitioner being a purchaser pendente lite is bound by the decree, and Order 21, Rule 35 lays down that delivery

of possession of immovable property may be made by removing any person bound by the decree, who refuses to vacate the property. The

petitioner before this Court is a person, who might be removed by the Court in order to deliver possession to the decree-holder. Therefore, the

petitioner comes within the definition of a judgment-debtor as mentioned in Rule 98 of Order 21, Civil P.C., and it was competent for the Munsif

to pass the order made against him.

4. On these grounds the Rule will be discharged with costs one gold mohur.