

(1967) 06 CAL CK 0032
In the Calcutta High Court
Case No : A.F.O.O. No. 16 of 1964

Ambika Prosad Sexena

APPELLANT

Vs

Sm. Bhagirathi Debi Agarwalla and Others

RESPONDENT

Date of Decision : 07-06-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, 146

Citation : AIR 1968 Cal 242 : (1967) 2 ILR (Cal) 78

Hon'ble Judges : P.N. Mookerjee, J;A.K. Dutt, J

Bench : Division Bench

Advocate : Ramaprasanna Bagchi, Monibhusan Sarkar and Satya Gopal bandopadhyaya, for the Appellant; Bankim Chandra Dutt and Subodh Kumar Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This appeal, which has been argued well on both sides and fully in all its details, raises a very interesting and important question.

2. The appeal relates to the respondent's right to execute a decree for ejectment. The decree was passed in respect of the disputed premises, comprising one go-down in the ground floor of Municipal Premises No. 68, Burtolla Street. Calcutta. It was obtained by the then landlords Indramoni Debi and others (Trustees) against the tenant (judgment-debtor) Chitra Gupta Press on May 12, 1961. Thereafter, the present respondent No. 1. Bhagirathi Debi Agarwalla, purchased the disputed premises from the said landlords Indramoni Debi and others (Trustees), who are the other respondents in this appeal, under a conveyance, by which the entire interest of the said landlords in the disputed premises passed. This conveyance was dated March 30, 1963. On May 17, 1963, the purchaser Bhagirathi applied for execution of the above decree for ejectment and, along with the said application for execution, filed an application for leave to execute the same on substitution in place of the original decree-holders Indramoni Debi and others (Trustees), her vendors. After service of notice on the

judgment-debtor, the present appellant Ambika Prasad Saxena, entered appearance and filed an objection u/s 47 of the CPC on July 18, 1963, alleging inter alia that the judgment-debtor Chitragupta Press was the sole proprietary concern of his predecessor, Kamta Prasad Saxena, who had died on October 5, 1960, that is, during the pendency of the ejectment suit in question, and in whose place there was no substitution therein, and that the applicant for execution, Bhagirathi Debi Agarwalla, had no locus standi to execute the above decree, as under the law, she was not entitled to that right.

3. To this petition of objection u/s 47 of the Code of Civil Procedure, there was a rejoinder by Bhagirathi, denying, in effect, the objector Ambika Prasad's contentions.

4. The learned Judge in the court below took up the matter of the respondent Bhagirathi's locus standi or right to execute the decree in question as a preliminary point and decided the same in her favour. Hence this appeal by the appellant Ambika Prasad.

5. That learned Judge in the Court below has made it clear that, in his aforesaid order, he has dealt only with the question of the respondent Bhagirathi's locus standi to execute the above decree and he has not considered any of the other points, raised in the appellant's objection u/s 47 of the Code of Civil Procedure, which points were intended to be taken up by him after disposal of the above question of locus standi if the said question be, as it has now been found in favour of the said respondent.

6. In this appeal, it is contended on behalf of the appellant, Ambika Prasad Saxena, that the learned Judge in the court below was entirely wrong in overruling the appellant's objection that the respondent No. 1, as purchaser, as aforesaid, had no locus standi to execute the decree in question. This was put on the ground that, in the conveyance by which the said respondent's purchase was made, there was no assignment of the said decree, and accordingly, Order 21 Rule 16 of the Code of Civil Procedure, which, according to the appellant, would be the only relevant provision if any, to aid the said respondent in the matter, would not be applicable.

7. In our view, the decision of the learned Judge in the court below on the above question of locus standi in favour of the respondent No. 1 is correct in the facts and circumstances of this case and, on the materials before us, that decision should be affirmed.

8. It is clear from the respondent No. 1's conveyance (Ext. 2), dated March 30, 1963, that thereby she acquired, from the original decree-holders (trustees), who were her vendors, the whole of the Municipal Premises No. 68, Burtolla Street, in which the disputed premises was situate and of which it was a part and all rights, liberties, privileges etc. to the said premises or thereunto belonging and all the estate, right, title, interest, property, claims or demands whatsoever of the vendors (the said trustees) into or upon the said premises and the

purchaser (respondent No. 1) was at all times thereafter to possess and enjoy the said premises quietly and peaceably.

9. In our view, a conveyance in the above terms passes unto the purchaser the entire rights of the vendors in or in respect of the disputed premises and that would include also all rights under a subsisting ejectment decree against a tenant of the premises, as, otherwise, transfer of the right of possession or enjoyment would not be complete. The conveyance (Ext. 2), therefore, may very well be taken to be an assignment of the ejectment decree also, -- and as this transfer or assignment is by the conveyance, which is in writing, it may very well come within the expression or description "assignment in writing" in Order 21, Rule 16 of the CPC and satisfy the requirements thereof. It would thus be a case where Order 21 Rule 16 of the CPC would be immediately attracted and the respondent No. 1 will be entitled to apply for execution and execute the decree in question under the terms of the said statutory provision in place of the original decree-holders, who were her vendors. This view would be amply supported on principle by the decision of this Court, reported in *Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another*, , which, though concerning a decree for arrears of rent on the relevant point and not a decree for ejectment, would be a good and sufficient guide and authority on the above question of principle. The said decision appears to have been followed by this Court and accepted as good law in *Jatindra Narain Bhaduri and Others Vs. Chandra Nath Pramanik and Others*, , and also *Radharani Basu v. Dwarkanath Mandal*, 41 Cal WN 608. The apparently contrary decisions in *Mathurapur Zemindary Co. Ltd. Vs. Bhasaram Mandal and Others*, , and *Prabashinee Debi Vs. Rasiklal Banerji*, , need not detain us. as, apart from anything else, they appear to be distinguishable on facts and may well be said to be not strictly relevant to the present question. The decision of the Supreme Court in *Jugalkishore Saraf v. Raw Cotton Co. Ltd.* AIR 1955 SC 376, which was similar to the last cited Calcutta cases *Mathurapur Zemindary Co. Ltd. Vs. Bhasaram Mandal and Others*, and *Prabashinee Debi Vs. Rasiklal Banerji*, , and to AIR 1942 Mad. 21, dealt really with the question whether a decree not in existence at the date of the transfer or conveyance under consideration, but coming into existence on a later date, would be covered by the said conveyance as a future right, acquired or to be acquired by the vendor and intended to be passed under the same, on equitable principles. and the learned Judges, in all the above cases, answered the said question in the negative on the facts before them and refused to apply Order 21 Rule 16 of the Code in the said cases upon that finding. It is clear, however, from the judgment of S. R Das, J., vide AIR 1955 SC 376 as he then was that the authority of *Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another*, , in the matter of a decree in existence at the date of the assignment or conveyance in question, remained unaffected that is, in regard to the cases, where upon a construction of the said conveyance, the same would cover the said decree, and to put it briefly, the said case was distinguished on that ground (Vide pp. 385. 391-2 of AIR 1955 S. C.).

10. It is true that, in the judgment of Bhagwati, J. in that case, there is one

passage (vide paragraph 56 at p. 399), which might not be reconcilable,-- apparently or at first sight at least -- with the principle, laid down in Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another, , on the point, but the said statement of law or general principle by Bhagwati, J. must be taken strictly on its terms and in the context of the case before his Lordship, and may, on a proper analysis or understanding, will be held not to affect the authority of Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another, , on a matter like the present, which would come more closely under that decision, remembering that the conveyance here and in Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another, , cover, on construction, the relevant decree or decrees in question so that the relative transfer would not be a "mere transfer of property" the words, stressed by Bhagwati, J., -- but would be quite different and the theory of a "mere transfer of property" would not apply to it.

11. In the judgment of the third learned Judge, Imam, J., in the above Supreme Court case, there is nothing to indicate that he was casting any doubt on the authority or correctness of the decision in Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another, , or the principle, enunciated and applied therein.

12. It appears, further, that the said principle has been applied to a case, similar to the present one, by the Patna High Court in Ram Nath Modi and Others Vs. Anardei Devi and Others, , and with all respect to the learned Judges, who have dealt with the questions on different occasions, we are inclined to think that the relevant principle of law was correctly stated in Ananda Mohan Roy and Others Vs. Promotha Nath Ganguli and Another, , and the said principle may well be applied to bring the present case within Order 21, Rule 16 of the CPC and entitle respondent No. 1 to execute the instant decree under the said statutory provision.

13. There is another way of looking at the matter. Even if Order 21, Rule 16 of the CPC may be assumed not to apply to the instant case, on the ground that there is no express assignment of the decree in question under the conveyance (Ext. 2), the ultimate position would not be different in law as it cannot be contended with any force whatsoever that, in spite of the said conveyance (Ext. 21, the rights under the ejectment decree in question were retained by the respondent No. 1's vendors, the decree-holders. In other words, the said rights must be held to have passed under the said conveyance (Ext. 2) and, although there was no express assignment of the decree in question, it was clearly a case, in which the purchaser respondent No. 1 became entitled, in law, to the rights of her vendors, the decree-holders, in the matter of the said decree, and in any view would be entitled to be called their representative or "a person claiming under them" in respect of the said decree. Upon that footing, she would be entitled to execute the decree in question u/s 146 of the Code of Civil Procedure, if not under Order 21 Rule 16 of the Code as assumed above, on the footing that there was transfer of the decree, at least, by implication or impliedly, if not

expressly or in writing, and this position would be well supported by the decision of the Supreme Court in *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, , which has put a very wide and liberal interpretation to the said section, and also by the earlier decision of the same court, reported in AIR 1955 SC 376 (supra), where too a similar broad view of the said section was taken. With respect, we agree with the aforesaid wide and liberal interpretation of the statutory provision in question, namely, Section 146 of the Code of Civil Procedure, as, otherwise, just rights would become unenforceable and would be defeated. In this view, the respondent No. 1 would be entitled to execute the decree in question as the legal representative of the original decree-holders--or, to put it in strict statutory language, as "a person, claiming under them," --under Section 146 of the Code of Civil Procedure, and this right, as it has been held by the Supreme Court in the above cited authority *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, would also include even the right to continue a pending proceeding.

14. In premises the view of the learned Judge in the court below, upholding the respondent No. 1's right to execute the decree in question and allowing her application in that behalf and rejecting the appellant's objections thereto, must be held to be right and must be affirmed.

15. We may add here that the above view, so far as Section 146 of the Code is concerned, would also be well supported by a more recent decision of the Andhra Pradesh High Court in *Satyanarayan Vs. Sindhu Bai Sharma*, , although, on Order 21 Rule 16 of the Code it put a very narrow construction which if we may say so with respect, is not acceptable by us as we have sufficiently made clear in the earlier part of this judgment, and, indeed it seems to me that, in the said Andhra Pradesh case, that statutory provision (Order 21 Rule 16 of the Code) may well have been and should have been applied. The same remarks apply to the earlier Madras case, reported in AIR 1942 Mad. 21 which expressed a view, similar to the above Andhra Pradesh view, though it ought to be stated, with respect and in fairness to the learned Judges of the Madras High Court in the above cited Madras case, that they, probably, would have been inclined to apply Order 21 Rule 16 of the Code to the case before them but for an earlier decision of the same High Court on the point.

16. Our above view of Section 146 of the Code would also be supported by the judgment in the Patna case, already cited, namely, *Ram Nath Modi and Others Vs. Anardei Devi and Others*,

17. The case of *Ram Piara v. Suraj Parkash* AIR 1960 J. K. 65 is distinguishable on facts and on the findings, made by the learned Judges there, but, if it intended to lay down anything, contrary to what we have stated above, we respectfully disagree with the said decision. The case in (1907) ILR 30 Mad. 28 is also clearly distinguishable, as part from anything else, it was case of part transfer of the property and cannot, therefore, be regarded as an authority against our statement of the law under Order 21 Rule 16 of the Code. Same

remarks apply to AIR 1924 426 (Bom.) , and the case reported in AIR 1946 Bom. 272 (FB) also lays down nothing to the contrary.

18. We would, therefore, dismiss this, appeal and uphold the decisions of the Court below, but we must make it dear, as already made clear by the learned Judge in the said court, that up till this stage or up till this time, only the appellant's objection to the locus standi of the respondent No. 1 to execute the decree in question has been decided. The appellant's other objections, taken in his application u/s 47 of the Code of Civil Procedure, including his objection that the decree in question was a nullity, as it was obtained against a dead person, still remain to be decided and they will now be decided by the learned Judge in the court below in accordance with law.

19. The appeal, accordingly, fails and it is dismissed, subject of course to the observations, made above, and, in the circumstances of this case, we would direct the parties to bear their own costs in this Court.

A.K. Dutt. J.

20. I agree.