

(2019) 07 JH CK 0162
In the Jharkhand High Court
Case No : Second Appeal No. 20 Of 2015

Arvind Kumar Gupta

APPELLANT

Vs

Tata Iron and Steel Company Limited And Ors

RESPONDENT

Date of Decision : 09-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100, Order 21 Rule 97

Citation : (2019) 07 JH CK 0162

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : Kaustav Roy, Umesh Mishra

Final Decision : Dismissed

Judgement

1. This appeal under Section 100 of the Code of Civil Procedure has been preferred by the appellant against the judgment/decreed dated 03.01.2015 passed by District Judge II, Jamshedpur in Misc. Appeal No.4 of 2014 by which the judgment/decreed dated 12.03.2014 passed by learned Civil Judge (Junior Division) I, East Singhbhum, Jamshedpur in Misc. Case No.14 of 2008 was affirmed.

2. The appellant was the objector in Misc. Case No.14 of 2008, arising out of Execution Case No.34 of 1996. The appellant had filed the said application under Order XXI Rule 97 of the Code of Civil Procedure in Execution Case No.34 of 1996. The said miscellaneous case was dismissed on merits. Aggrieved by the said order of dismissal, the appellant had preferred Misc. Appeal No.4 of 2014, which also stood dismissed by the District Judge, Jamshedpur vide judgment dated 3rd January, 2015, resulting in this appeal.

3. An eviction suit was filed by the respondent No.1 herein against the respondent No.2 for evicting the respondent No.2 from the shop in question. The suit was numbered as Title Suit No.380 of 1983. A decree was passed against the opposite party No.2 and the learned Munsif, Jamshedpur ordered to vacate

the shop premises. The respondent No.1 herein, thereafter, filed an Execution Case No.34 of 1996 to execute the said decree. It is the case of this appellant that when the Civil Court Peon went to the decretal premises and asked the appellant to vacate the same, he could come to know that a decree of eviction has been obtained by the respondent No.1 against the respondent No.2. The appellant claimed that the respondent No.2 had executed an agreement on 11.08.2006 in favour of the appellant in respect of Shop No.2 on commission of Rs.1,500/- and other charges. The claim of the appellant is that he has also paid the outstanding electricity bills and also paid advance to respondent No.2 vide bank drafts. It is their case that the shop is in his occupation and the respondent No.1 had full knowledge about the said occupation, but, inspite of that without raising any objection, has filed a suit to evict the respondent No.2. On the aforesaid averments, Misc. Case No.14 of 2008 was instituted, which arose out of Execution Case No.34 of 1996. The opposite party No.1 contested the proceeding. Witnesses were examined on behalf of the applicant and documents were also exhibited. The opposite party also adduced one witness. The Civil Judge (Junior Division) I, East Singhbhum, Jamshedpur, thereafter, considering the issues, had held that no legal issues have arisen to decide the case under Order XXI Rule 97 at the behest of the appellant, thus, dismissed the miscellaneous case. The appellant preferred an appeal before the Lower Appellate Court, which was also dismissed.

4. I have heard counsel for the parties and have gone through the judgments passed by both the Courts below.

5. Counsel for the appellant herein submits that both the Courts below had not considered the case of the appellant. He submits that the appellant being in possession by virtue of an agreement with the respondent No.2, could not have been evicted. He submits that since the appellant was not in knowledge about the Title Suit No.380 of 1983 and since the plaintiff did not implead this appellant in the suit knowing fully well about occupation of the property by him, the miscellaneous case and miscellaneous appeal should have been allowed.

6. After going through the records of the case, I find a very interesting fact in this case. The suit for eviction was numbered as Title Suit No.380 of 1983, wherein the eviction decree was passed. The execution case was filed, which was numbered as Execution Case No.34 of 1996. It is the defence of the appellants that he was put in possession by virtue of an agreement by the respondent No.2. Surprisingly, this agreement is dated 11.08.2006. The payment of money by the appellant to the respondent in lieu of such possession, has also been made on 11. 08.2006. This clearly goes to suggest that during pendency of the execution case, this arrangement was entered into between the respondent No.2 and the appellant. This transaction of transfer is pendente lite the Court proceedings that too in execution case and does not give any right to this appellant. This Court feels that this transaction is nothing but an unholy means to resist the decree being executed. No legal issue was raised in this case by the appellant, both

before the Courts below and before this Court.

7. Thus, I find no merit in this appeal. The same is dismissed.