
(2016) 01 AHC CK 0027

In the Allahabad High Court

Case No : Matters Under Article 227 No. 7558 of 2015

Barkallah

APPELLANT

Vs

Smt. Sajrunisha @ Ajarutunisha

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2016) 161 AIC 946 : (2016) 115 ALR 536 : (2016) 1 ARC 393 :
(2016) 131 RD 622

Hon'ble Judges : Suneet Kumar, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

Suneet Kumar, J. - The defendant-applicant has approached this Court assailing the orders, passed by the courts below whereby objection filed under Section 47 CPC by the respondent was allowed holding that the decree is non-executable.

2. The plaintiff-respondent filed a partition suit against the applicant which was decreed, aggrieved, applicant preferred an appeal, in appeal on the basis of compromise, the suit was decreed. In execution proceedings instituted by the applicant an objection was preferred by the respondent under Section 47 CPC contending that the property had already been sold by the applicant to the respondent, as such the decree has become un-executable. The executing court allowed the objection by order dated 26 August 2013 in Execution Case No. 2 of 2010, aggrieved, applicant preferred a revision being Revision No. 109 of 2013(Barkallah v. Sajrunisha). The revisional court noted in the impugned order that the compromise is dated 24 January 1989 whereas the applicant had sold the property on 7 July 1988 to one Ali Akbar who further transferred the property to the respondent, the property that was transferred was subject matter of the suit. The order would further reflect that the applicant played fraud upon the court as it was not brought to the notice of the appellate court, while filing the compromise, that the property had already been sold and the applicant is no

longer owner. It has been further noted that till date no suit for cancellation of the sale deed has been instituted, further, the original vendee Ali Akbar was not party to the suit, as such the compromise was obtained fraudulently, therefore, the revisional court rejected the revision affirming the order of the executing court.

3. The learned counsel for the applicant would submit that principle of lis pendens as enshrined under Section 52 of Transfer of Property Act would apply. The submission in my opinion is misconceived. It is admitted that the suit property was transferred by the applicant prior to the compromise to Ali Akbar who thereafter transferred it to the respondent, therefore whatever right or title the applicant had in the suit property stood extinguished. The executing court was justified in allowing the objection of the respondent in these circumstances. Learned counsel for the applicant failed to show any illegality, infirmity or jurisdictional error in the impugned order. In support of his submission, learned counsel placed reliance upon the judgement of Apex Court rendered in Kirpal Kaur v. Jitgender Pal Singh and others; AIR 2015 SC 2967.

4. The petition being devoid of merit is accordingly dismissed.

5. No order as to costs.