
(1978) 05 AHC CK 0026
In the Allahabad High Court
Case No : S.A. No. 2233 of 1968

Behari Lal (died) and after him Smt. Rukmani Devi and Others APPELLANT
Vs
Gothi Damodar Dass RESPONDENT

Date of Decision : 08-05-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103, Order 21 Rule 97, Order 21 Rule 98

Citation : (1978) AWC 527

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : V.K. Gupta, for the Appellant; K.P. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan, J.—This is a Plaintiff's second appeal in a suit under Order 21, Rule 103 of the Code of Civil Procedure. The Plaintiff resisted the execution of decree in suit No. 280 of 1962 of the Court of Munsif Havali, Aligarh in which the Defendant Respondents 1st set were the Plaintiff-decree-holders and the Defendant-Respondent 2nd set was the judgment-debtor, The two courts below found that the Plaintiff-Appellant had no right to be in possession of the property in suit, and that he was a mere trespasser who had not been able to establish adverse possession for more than 12 years before the date of the suit.

2. The learned Counsel for the Appellant urged before me that the Plaintiff-Appellant having been found to be in possession and the decree in suit No. 280 of 1962 of the court of Munsif, Havali, being not binding on him as he was no party to that suit, he could not be ejected in execution of that decree inasmuch as it has not been found that he was claiming through the Defendant Respondent 2nd set who was the judgment-debtor in that suit.

3. The learned Counsel referred me to Rules 97, 98 and 103 of Order 21 of the CPC as they stood before the amendment of the Code in 1976. How, under Rule

98 if the court is satisfied that the resistance or obstruction was caused without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct the applicant to be put in possession of the property. In order that the executing court may have jurisdiction to execute the decree against a person who is not the judgment-debtor and obstructs the execution of the decree, the court has to find that the resistance or obstruction to the decree, was without any just cause, and at the instigation of the judgment-debtor. The learned Counsel says that there was no such finding in the order under Rule 98 of Order 21 with which he was aggrieved and which led to the filing of the present suit under Order 21 Rule 103. Be that as it may, if the order of the executing court under Rule 98 of Order 21 was illegal without jurisdiction in the sense that his possession was on his own account and lawful, he did not appeal therefrom. In a suit under Order 21, Rule 103, the Plaintiff had, in order to succeed, to establish the right which he claims. Now, a mere trespass on somebody's else property is, in my view, not a right which can be established in a court of law Unless it has matured into right to property by prescription. The Courts below having found that the period of adverse possession of the Plaintiff was less than 12 years, in my view, he had no right to remain in possession of the property against the owners thereof - namely, the Defendant-Respondents 1st set. The Plaintiff-Appellant thus failed to establish the right which he claimed to his present possession of the property. The suit was, in my view, rightly dismissed by the two courts below.

4. In the result, the appeal fails and is dismissed with costs throughout. The stay order shall stand vacated.