

(1972) 04 AHC CK 0014

In the Allahabad High Court

Case No : Civil Revision No's. 1363 and 1364 of 1971

Bhagwati Prasad Hajela

APPELLANT

Vs

Bishambhar Nath Singh Kapoor

RESPONDENT

Date of Decision : 24-04-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 105, Order 21 Rule 35(3), 76

Citation : AIR 1972 All 552 : (1972) 42 AWR 493

Hon'ble Judges : J.S. Trivedi, J

Bench : Single Bench

Advocate : D.C. Saxena, for the Appellant; K.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Trivedi, J.—The applicant is a judgment-debtor and the opposite party is a decree-holder. The decree-holder had originally applied for delivery of possession through an amin. Subsequently when the case was transferred to the Court of Additional Civil Judge it was prayed that possession be effected through a Commissioner. The Additional Civil Judge granted the prayer and an Advocate Commissioner was appointed to effect delivery of possession. The order was challenged in revision, and it was contended that the executing court was not competent to effect delivery of possession through a Commissioner. Reliance was placed on Padam Sen and Another Vs. The State of Uttar Pradesh, The learned IInd Additional District Judge dismissed the revision holding that the case referred and relied by the revisionists was distinguishable. Hence this revision.

2. The question involved in this revision is whether delivery of possession could be effected through a Vakil Commissioner. The learned counsel for the applicant has contended that the power and jurisdiction of the court to issue commission is limited to purposes enumerated in Sections 75 to 78 of C.P.C. His further contention is that Section 141 of the CPC being limited to suits even power to appoint Commissioner given u/s 75 and Order 26, C.P.C. will not be available to executing court.

3. Section 141 mentions that the procedure provided in the CPC in regard to suit shall be followed as far as Could be made applicable in all proceedings in any court of civil jurisdiction. Proceedings in any court of civil jurisdiction refer only to original matters and do not include proceedings in execution vide Dokku Bhushayya Vs. Katragadda Ramakrishnayya,

4. The question, therefore, is whether irrespective of Section 76 and Order 26, C.P.C. the executing court had jurisdiction to direct delivery of possession through a Commissioner. Order 21 deals with the procedure for execution of decrees and orders. Order 21, Rule 35, C.P.C. authorises the Court to deliver possession of immovable property. Sub-clause 3 of Order 21, Rule 35, C.P.C. reads as under:

"Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."

This sub-clause is indicative of the fact that the executing court is competent to effect delivery of possession through its officers. An Advocate is not an officer of the Court till he is appointed a Commissioner and once he is appointed a Commissioner he becomes an officer of the Court as long as his authority to act as a Commissioner continues. Order 21, Rule 105, C.P.C. as amended by this Court is also pointer of the fact that a Commissioner can be appointed for special reasons, It reads as under:

"Every attachment of movable property under Rule 43, of negotiable instrument under Rule 51, and of immovable property under Rule 54, shall be made through a civil court Amin or bailiff, unless special reasons render it necessary that any other agency should be employed, in which case those reasons shall be stated in the handwriting of the presiding Judge himself in the order for attachment."

If, therefore, the attachment could be effected through an officer of the court there is no justification why the delivery of possession which is dependant on the passing of the decree cannot be effected through a Commissioner. There is nothing in the General Rules (Civil) or in the CPC to the contrary. Reliance has been placed by the applicant on the Padam Sen and Another Vs. The State of Uttar Pradesh, wherein it was laid down:

"Court has no inherent powers u/s 151 to appoint a Commissioner to seize account books in the possession of the plaintiff, upon an application by the defendant that he has apprehension that they would be tampered with."

The facts of this case are distinguishable from Padam Sen's case.

5. In Padam Sen's case the question was whether the Court had power to seize the documents or not and if the Court had not power to seize the documents the

exercise of that power through a Commissioner was equally without jurisdiction. In a case for delivery of possession the Court has power to order delivery of possession and the machinery through which possession is delivered is through an Amin. Therefore the power which can be exercised by the Court through an Amin can equally be exercised by the Court through a Commissioner who on his appointment as a Commissioner becomes an officer of the Court for executing orders of the Court. The Court below was, therefore, right in holding that the appointment of a Commissioner for delivery of possession was perfectly justified.

6. As the two revisions are in respect of two tenements of the same building owned by the same landlord against the same tenant both the revisions are disposed of by one common judgment. For the reasons given above these revisions have no force and are dismissed with costs.