

(1961) 01 GAU CK 0002
In the Gauhati High Court
Case No : Civil Revision No. 107 of 1960

Bholanath Bondopadhyay	Vs	APPELLANT
Banarsilal Saraf and Others		RESPONDENT

Date of Decision : 23-01-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, 151

Citation : AIR 1961 Guw 79

Hon'ble Judges : Haliram Deka, C.J

Bench : Single Bench

Advocate : S.M. Lahiri, General, K.C. Goswami and J.P. Bhattacharjee, for the Appellant; P. Choudhuri and J.C. Medhi, for the Respondent

Judgement

H. Deka, C.J.—This rule was obtained by the petitioner whose application under Order 21, Rule 100, CPC was rejected by the Subordinate Judge, Lower Assam Districts, Gauhati. The facts are that the opposite parties obtained a decree against Jyotinath Chakravarty and Anr. in Title Suit No. 67 of 1955 of the Subordinate Judge's Court at Gauhati and in execution of that decree they were put in possession of the land covered by the decree on 27th June 1958.

An objection was raised by the petitioner Bholanath Bondopadhyay by way of an application under Order 21, Rule 100, Civil P. C. which was numbered as Misc. Case No. 91 of 1958 of the Subordinate Judge's Court at Gauhati, that in executing the aforesaid decree in Title Execution Case No. 17 of 1958 of the Subordinate Judge's Court, Gauhati the decree holders had dispossessed the petitioner of an area of land measuring about 6 1/2 lechas in dag No. 2836 of K. P. Patta No. 1080 without any lawful right and the petitioner prayed for being restored to possession under Order 21, Rule, 101, Civil P. C.

Both the parties led evidence and a Commissioner was appointed for survey and the result of the report was that the decree-holders while enforcing the execution of the decree had got into possession of two strips of land of the petitioner -- one measuring 1.02 lechas in dag No. 2836 and Anr. a passage of about 82" in length

and 4? in breadth. The learned Subordinate Judge accepted the facts in favour of the petitioner to the extent supported by the surveyor's report but he rejected the petition holding that it would not lie. It is against this order of the learned Subordinate Judge, Gauhati dated 19-9-60 that the petitioner has come up to this Court in revision.

2. The learned Advocate General appearing on behalf of the petitioner has contended before me that the learned Subordinate Judge acted illegally in directing that the application under Order 21, Rule 100, Civil P. C. should be rejected. His contention was that since it was by the writ of the court that the petitioner was dispossessed from a portion of his property, it was upto the court by exercising its inherent power, to restore the petitioner to possession of the land from which he has been illegally dispossessed.

3. I feel constrained to hold that with a view to judge whether the application would lie, the provisions of Order 21, Rule 100, Civil P. C. need consideration. It is worded as follows:

100. (1) Where any person other than the judgment-debtor is dispossessed of such property or, where such property has, been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

I have quoted above only the relevant portion of the Rule. The provision distinctly relates to a person other than the judgment-debtor being dispossessed of immovable property by the decree-holder. In my opinion the words "such property" would mean the property covered by the decree and not any other property and in the particular case the petitioner was dispossessed not of property Covered by the decree but of some other property which is not covered, in my opinion, by the words "such property" occurring in the Rule as quoted above, I therefore agree with the learned Subordinate Judge that Order 21 , Rule 100, Civil P. C. has no application to the facts of this case.

4. I do not think that the argument of the learned Advocate General that by exercise of the inherent power the party should be restored to possession, can take the matter very far. Even if we assume that Section 151, Civil P. C. had application, -- since the learned Subordinate Judge failed to exercise such discretion, I do not think that I as a court of revision will be justified in interfering with the impugned order u/s 151, Civil P. C. as all the circumstances leading to the dispute are not known to this Court nor can I be sure, consequently, as to whether it is necessary for the ends of justice to interfere. I accordingly discharge the rule but make no order as to costs.