
(1998) 12 KAR CK 0014

In the Karnataka High Court

Case No : Civil Revision Petition No. 3796 of 1997

B.V. Kuppu Swamy

APPELLANT

Vs

Syed Siraj Ahmed and Others

RESPONDENT

Date of Decision : 15-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 99, 115, 151

Citation : (1999) ILR (Kar) 2438 : (1999) 3 KarLJ 643

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri C.B. Srinivasan, for the Appellant; Sri Kumar and Kumar, for the Respondent

Judgement

1. The respondent obtained a decree in Original Suit 10195 of 1996 on 28-10-1996 against the defendants therein. Subsequently, he has taken out execution in No. 10062 of 1997 on the file of the X Additional Civil Judge, Mayo Hall, Bangalore, and it appears that the decree-holder/respondent had taken possession of the schedule property on 19-6-1997. The petitioner thereafter filed an application under Order 21, Rules 99, 100 and 101 read with Section 151 and Section 47 of the CPC as obstrucuter and claimed that he was in lawful possession of the premises on his own right and he was unauthorisedly dispossessed by the respondents. Therefore, he claimed for the restoration of possession. The portion of the premises which was said to be in his possession is described in the schedule. After filing of this application and hearing the oral submissions of the Counsel for the parties, the Executing Court passed the order holding that the application was not maintainable and the petitioner was not entitled for the relief as sought for. Consequently, his petition was dismissed. Being aggrieved by that order, the petitioner filed this petition u/s 115 of the CPC.

2. Heard.

3. The learned Counsel for the petitioner has vehemently argued that the Court

below has dismissed the petition without proper adjudication as required for the disposal of a suit. He also further submitted that the Court has committed an error in disposing of the petition only after hearing the arguments of the respective Counsel. He also emphasised the fact that the application filed by the petitioner is in the nature of a suit. Therefore, a full enquiry or trial is required as the petitioner who was wrongfully disposed cannot file any suit for restoring the possession.

4. It is no doubt true that from the perusal of the order, the Court has held that the petitioner had not made out that he was in possession of the property as on the date of the execution of the decree in view of the endorsement made by the Court Ameen. Therefore, without holding any enquiry or trial, he disposed of the petition against the petitioner. At this stage, however the learned Counsel for the respondents contended that the revision petition is not maintainable but only an appeal lies. Therefore, the revision petition is summarily liable to be dismissed.

5. However, the learned Counsel for the petitioner submitted that the application was not decided on merits permitting the parties to lead evidence. It was not decided on proper adjudication, but only on the question of maintainability of the petition. Therefore, the only remedy available to the petitioner was to file revision petition. It is no doubt true that the application of the petitioner was disposed of on the question of maintainability. The Court has come to the conclusion that the petitioner has failed to make out in what capacity he was in possession of the property and which portion of the property was in his occupation and in other words, the Court has held that there is nothing to indicate that he was in possession of the property at any time, much less during the time of execution of the decree. The respondent contended that he was never in possession of any property at all. Further, except the xerox copy of the notice issued to the petitioner in regard to some matter pending before the Supreme Court, he has not produced any other material to show that he was in possession of the schedule property or any portion thereof in his individual right which is the main ingredient to maintain an application under Order 21, Rules 98 to 103 of the CPC. It is not the case that the Court below has not considered the records and failed to consider any materials produced by the parties. The petitioner also has not requested the Court to hold any enquiry. On the other hand, the petitioner submitted his argument to substantiate the contention that the application is maintainable. Therefore, it is clear that the Court has looked into all the materials placed before it and held that the petitioner has failed to make out that he was in possession of the property in his individual right on the date of executing the decree. There is nothing to indicate that the petitioner was present at the time of executing the decree. There was no obstruction offered by the petitioner except stating that the possession was taken with the help of police and he was unable to resist the same. There is nothing to show that he was thrown out of his house which he claims to be in his possession. There is not even an iota of evidence placed to show that there was a tile roofed house measuring 9" x 15" as contended by him. It is a settled law that any order

passed on such an application filed under Order 21, Rules 98 to 103 of the CPC will have the force of the decree. Under those circumstances, it is necessary to refer to the Full Bench decision of this Court in V.K. Rama Setty Vs. A. Gopinath, , wherein it is held:

"All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

Where any application has been adjudicated upon under Rule 98 or Rule 100, the order made thereon, shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree".

6. It is also observed that the determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. The right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. It is further held that the Court has therefore, to wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution as held by their Lordships in Noorduiddin Vs. Dr K.L. Anand, , which was followed by the Full Bench of this Court.

7. It is also observed by the Division Bench of this Court in Paramount Industries Vs. C.M. Malliga, , that when the person in possession of the Immovable property claims that he is not bound by the decree because he is in possession in his own right, to tell him that the Court cannot examine his contention and it will execute the decree and dispossess him and thereafter he could file a suit and establish his title is opposed to the very civilised notions of civil rights of the citizen which include a right, title and interest in, and to Immovable property. This would result in obtaining collusive decrees and dispossessing the person in possession of Immovable property in their own right. It is further observed that keeping in view these basic principles, the provisions of sub-rule (1) of Rule 35 of Order 21 and Rules 97 to 101, 103 and 104 of Order 21 of the CPC are to be read and construed. These rules are to be read together. In that case, it is not difficult to see that these rules provide for deciding such obstruction or objections in the same manner as a suit and order passed therein is made appealable. From these decisions and also the object and purpose of sub-rule (1) of Rule 35 of Order 21, Rules 97 to 101, 103 and 104 of Order 21 is taken into consideration, the abstractor must prove prima facie that he was in possession of the property in his individual right.

8. In this case, the petitioner has not at all mentioned as to how he came in possession of the property and whether he has any individual right over the property. He has merely stated that he has been in possession of the property from 1947 and he has also stated that he was the defendant in some other suit. He has not even placed any materials to show as to what has happened to those suits. Further, the identification of the property was also in dispute. No material is placed before the Court to establish it. Besides that, during the pendency of the execution also, he did not make any application objecting to execute the decree against him. Even at the time of executing the decree also, there is absolutely nothing, even an iota of material placed before the Court to show that he has raised his little finger objecting the Court officials from executing the decree. Therefore, prima facie there is nothing on record to show that the petitioner was in possession of the property. Under those circumstances, the Court has come to the conclusion that the application is not maintainable. That order came to be passed by the Court after hearing both parties. Therefore, it has the force of a decree.

9. The learned Counsel for the petitioner however, submitted that the word "adjudicate" is used in this provision and therefore, the case was not properly adjudicated. Under those circumstances, he has drawn my attention to the Law Lexicon for the meaning of the word "adjudicate" which reads :

"To hear or try and determine, as a Court; to settle by judicial decree; to adjudge (as). The Court "adjudicated" upon the case".

It does not merely say that only after holding enquiry or trial if the order is passed, it comes under the meaning of adjudication. As stated above, both the parties were heard and the Court has decided the case on merit holding that the application is not maintainable. Such being the position, it has the force of a decree and therefore, as rightly pointed out by the learned Counsel for the respondent, only appeal lies and a revision does not lie to this Court.

10. However, the learned Counsel for the petitioner further placed reliance on a decision rendered by the Supreme Court in Major S.S. Khanna Vs. Brig. F.J. Dillon, , wherein their Lordships have held while interpreting Section 115 as thus:

"The power of the High Court u/s 115 is exercisable in respect of "any case which has been decided". The expression "case" is not defined in the Code, nor in the General Clauses Act. It is undoubtedly not restricted to a litigation in the nature of a suit in a Civil Court. It includes a proceeding in a Civil Court in which the jurisdiction of the Court is invoked for the termination of some claim or right legally enforceable".

11. It is also necessary to refer to the decision rendered by the Hon"ble Supreme Court in Babulal v Raj Kumar and Others, wherein the Court held that under the Amended Code, right of suit under Order 21, Rule 63 of old Code has been taken away. The determination of the question of the right, title or interest of the objector in the immovable property under execution needs to be adjudicated

under Order 21, Rule 98 which is an order and is a decree under Order 21, Rule 103 for the purpose of appeal subject to the same conditions as to an appeal or otherwise as if it were a decree. Therefore, the executing Court is required to determine the question, which the appellants had objected to the execution of the decree as against the appellants who were not parties to the decree for specific performance.

12. According to Section 115 of the CPC the High Court can exercise revisional jurisdiction in any case which has been decided in a Court subordinate to such High Court and in which no appeal lies thereto. In this case, the learned Counsel for the respondent submitted because the order passed by the Court below has the force of a decree an appeal lies. That being the position of law, revision petition is not maintainable. However, the learned Counsel for the petitioner submitted that the petition will have to be decided only on revisional side. In view of the above findings, I hold that the revision petition is not maintainable. Though the attention of the petitioner on this point was drawn, he has not even requested the Court to treat it as an appeal. Under those circumstances, the only course open to this Court is to dismiss this revision petition as not maintainable. In addition to that, I have also considered the case on merits as indicated above and the Court has taken into consideration all the materials and rightly passed the order dismissing the application.

Therefore, I do not find any reason to interfere with the order passed by the Court below.

For the foregoing reasons, I hold that this petition has no merits and accordingly, it is dismissed.