
(1997) 07 RAJ CK 0073
In the Rajasthan High Court
Case No : C. Revision No. 306 of 1994

Chandra Singh (L.R. of late Shrangar Kanwar)	APPELLANT
Vs	
Smt. Shanti Devi and Others	RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 102, Order 21 Rule 98, Order 39 Rule 1

Citation : (1998) 2 RLW 1197 : (1997) 2 WLN 161

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—This revision arises from the order dated November 9, 1993 of the learned Additional District judge No. 2, Jaipur City, Jaipur, whereby the appeal preferred by the plaintiff non petitioner (for short the "plaintiffs under Order 43 Rule 1 CPC was allowed and temporary injunction was issued against the defendant petitioner (for short the defendant) restraining him from dispossessing the plaintiffs from shop in dispute in execution of decree dated Feb. 16, 1979.

2. In order to highlight the grievance of the defendant, it is necessary to note a few backdrop facts.

3. One Shrangar Kanwar obtained a decree for eviction against M/s. Ram Gopal Mali Ram in respect of shop bearing No. 14 situated in Khanda Kotawali Jaipur on Feb. 16, 1979. On November 8, 1979 the decree holder move an application under Order 21 Rule 97 C.P.C. in the execution proceedings complaining of obstruction by one Tola Ram in obtaining the possession of the decretal property. Tola Ram entered appearance and contested the said application. One of the averments of Tola Ram in his reply to that application was that he was there in the Shop in dispute as a partner of Shanti Devi, who according to Tola Ram, was lawful tenant of this shop from its owner Hari Singh. Tola Ram stated in this

context that the judgment debtor surrendered possession of this shop to Hari Singh during the pendency of the suit for eviction filed by the decree holder against the judgment debtor. He further averred that after obtaining possession from the judgment debtor during the pendency of the suit, Hari Singh let out the shop in dispute to Shanti Devi on October 6, 1973 and that he (Tola Ram) was in occupation of the shop as a partner of Shanti Devi. Shrangar Kanwar, in view of contentions raised by Tola Ram, "moved an application before the executing Court on March 13, 1981 under order 21 Rule 102 CPC, pleading that Tola Ram was obstructing the delivery of possession of shop, admittedly on the basis of his alleged partnership with Shanti Devi. That Shanti Devi had acquired possession from Hari Singh as that Hari Singh had acquired such possession from the judgment debtor during the pendency of the suit of the decree holder against the judgment debtor. Shrangar Kanwar therefore prayed for an order that no enquiry under Order 21 Rule 98 CPC was necessary and that Tola Ram's obstruction was liable to be removed on the basis of his own averments. The executing court by its order dated May 21, 1981 allowed the application under order 21 Rule 102 CPC and directed that decree holder Shrangar Kanwar be put in possession of the decretal property by removing obstruction caused by Tola Ram. The appellate Court also dismissed the appeal preferred by Tola Ram vide order dated August 31, 1982. Thereafter S.B. Civil Execution Second Appeal No. 2/1982 was filed by Tola Ram which was dismissed by this Court vide order dated November 6, 1982, review petition filed against the said order was also rejected. The executing court thereafter issued warrant for possession on November 21, 1987. In between another partner Shanti Devi and her husband Ram Nath Vijay (plaintiffs) instituted suit for declaration of permanent injunction against Shrangar Kanwar and Hari Singh. A temporary injunction application bearing No. 708/1987 was also moved along with the suit, which was rejected by the learned trial court vide its order dated March 31, 1989. The plaintiff Shanti Devi and Ram Nath Vijay preferred appeal under order 43 Rule 1 CPC against the said order. The learned appellate court vide judgment order dated November 9, 1993 allowed the appeal and* while setting aside the order of the trial court issued temporary injunction in favour of the plaintiffs as mentioned hereinabove.

4. After having hear learned Counsel for the parties and after careful scrutiny of the record, I am of the considered opinion that provisions of order 21 Rule 102 CPC are attracted in the matter and the learned appellate court committed error of jurisdiction in allowing the appeal and setting aside the order of the learned trial Court. The learned appellate Court did not properly peruse the order passed by this Court. S.B. Civil Execution Second Appeal 2, 1982 on November 6, 1982. This Court in the said order propounded thus:

The fact remains that Tola Ram, the appellant has not claimed any independent right to the possession of the shop in dispute. He tried to referred the obstruction caused by him to the delivery of the property to the decree holder on the ground that he is a partner of Shanti Devi and that Shanti Devi is a tenant of Hari Singh. He admits in this connection that Hari Singh who claimed to be the landlord of

this shop qua Shanti Devi is claiming the right only on the basis of the transfer of possession of this shop to him by the judgment debtor during the pendency of the suit against him by the judgment debtor. If so, order 21 Rule 102 C. P. C is quite clear in as much as it lays down that nothing in Rule 98 shall apply to resist or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment debtor has transferred the property after the institution of the suit in which the decree was passed Tola Ram does not have any right to remain in possession of this shop better than the right of Shanti Devi and for that matter of Hari Singh. If possession to Hari Singh was delivered by the judgment debtor during the pendency of the suit of the decree holder against the judgment debtor then Tola Ram cannot possibly justify the resistance of obstruction caused by him to the delivery of the possession of the decree holder.

(Emphasis Supplied)

5. Indisputably Shrangar Kanwar instituted suit for eviction and recovery of rent against M/s. Ram Gopal Mali Ram on Feb. 3, 1973 and in execution of decree passed in the said suit when sale Amin on November 7, 1979 reached at the shop in dispute for delivery of possession, Tola Ram resisted the possession on the ground that Hari Singh had let out the shop to Shanti Devi, partner Vijay Store and rent deed was executed on October 3, 1973. I have carefully perused the rent deed a photo copy of which has been annexed by the plaintiff Shanti Devi and Ram Nath along with the plaint. The rent deed, though executed by Shanti Devi and Hari Singh jointly but it only bears the signatures of Shanti Devi who also put 13.10.73 under her signatures. Hari Singh did not put his signatures over the said deed. In para 13 of the plaint the plaintiff pleaded that plaintiff Shanti Devi came to know about the execution proceedings of the decree on August 27, 1987 through her husband plaintiff Ram Nath Vijay, therefore, cause of action arose on August 27, 1987 and also on October 7, 1987 when the plaintiff had knowledge of the collusion of Shrangar Kanwar and Hari Singh. This averment does not appear to me probable. Tola Ram a partner of Shanti Devi resisted the possession of the property on November 7, 1979 and thereafter contended the matter upto second appeal for protecting the possession of "Vijay Store" in the shop. It cannot be believed that Shanti Devi and her husband Ram Nath Vijay who is an Advocate did not have knowledge of the proceedings initiated by Tola Ram. The conduct of Tola Ram as well as plaintiffs Shanti Devi and Ram Nath Vijay, is evident from the record and no further comment is necessary in this respect. From the averments in the plaint Shanti Devi and Ram Nath Vijay cannot justify the resistance of obstruction in the delivery of possession of the shop as Shanti Devi cannot acquire better right than Hari Singh.

6. Be that as it may, the plaintiffs having failed to prove prima facie case in their favour are not entitled to any relief sought by them in their application under order 39 rules 1 & 2 CPC. Learned trial court after discussing all the aspects of the matter, rightly rejected the application and reversed of the said order by the. learned Appellate court was not legal in view of the order passed by this Court in

S.B. Civil Execution Second Appeal No. 2/1982 on November 6, 1982.

7. Consequently, the revision succeeds and is hereby allowed. The order dated November 9, 1993 of Addl. District Judge No. 2. Jaipur City, Jaipur stands set aside and the order of trial court dated March 31, 1989 is confirmed. Costs made easy. Record be sent back forthwith.