
(1978) 11 CAL CK 0031
In the Calcutta High Court
Case No : Second Appeal No. 1271 of 1966

Chhagan Lal

APPELLANT

Vs

The Indian Iron and Steel Co. Ltd. and Others

RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35, Order 21 Rule 36, 47
Transfer of Property Act, 1882 — Section 54
West Bengal Non-Agricultural Tenancy Act, 1949 — Section 70

Citation : AIR 1979 Cal 160 : 83 CWN 195

Hon'ble Judges : R. Bhattacharya, J; Manoj Kumar Mukherjee, J

Bench : Division Bench

Advocate : S.C. Das Gupta and Kanan Kumar Ghosh, for the Appellant; P.N. Mitter, A.K. Bose and Rameswara Saha, for the Respondent

Final Decision : Allowed

Judgement

R. Bhattacharya, J.—In this Second Appeal Chhaganlal Marwari, the principal defendant No. 1 of the original suit is the appellant- The appeal is being contested by the plaintiff-respondent, the Indian Iron & Steel Co. Ltd. described hereinafter as the Company.

2. The allegation of the plaintiff-company in the plaint is that the pro forma defendant No. 4 Mahammadin Brothers, a business concern was a non-agricultural tenant in respect of the suit land under the plaintiff and thereafter some constructions were made by the said tenant. The Company filed the Title Suit No. 76 of 1953 in the First Court of Munsif, Asansol against Mahammadin Brothers for recovery of khas possession of the suit land by evicting the said tenant therefrom on determination of the tenancy and also for recovery of arrears of rent and mesne profits. In that suit a preliminary decree was passed on 12-11-1953. The recovery of khas possession of the disputed property was to be made on payment of compensation as might be agreed upon between the parties or determined by the Court in respect of the structures standing on the

land. In terms of this preliminary decree a commission was appointed for determination of the value of the structures and the compensation was ultimately assessed by the Court at Rs. 1,390/- and the said amount was deposited by the plaintiff. Accordingly a final decree was passed against Mahammadin Brothers in Aug., 1957. According to the company after the passing of the final decree, Mahammadin Brothers abandoned the suit property in favour of the plaintiff although the said tenant had let out the suit premises to the principal defendant No. 1 Chhaganlal at a monthly rental of Rs. 30/- prior to the passing of the final decree-. Chhaganlal in his turn let out the suit premises to the principal defendants Nos. 2 and 3 who started occupying the suit premises. According to the plaintiff-company, after the passing of the final decree and the abandonment of the suit premises by Mahammadin Brothers in favour of the plaintiff, the right, title and interest of Mahammadin Brothers in the suit property came to vest in the plaintiff and as such the plaintiff-company became the direct landlord of the principal defendant No. 1. It has been further alleged that the defendant No. 1 promised to pay monthly rents but failed to pay the same. The plaintiff-company thereafter served a notice to quit upon the defendant No. 1 on the expiry of the last day of Aug., 1963. As the defendant, did not comply with the notice, the company filed the instant suit for declaration of its title, recovery of possession of the suit premises and other reliefs.

3. The principal defendant No. 1 Chhaganlal contested the suit by filing a written statement. His case is that one Mahammadin and his brother Imammuddin were non-agricultural tenants in respect of the suit land and they started a business in the name of Mahammadin Brothers. Chhaganlal was a tenant in respect of the structures under them and the defendants Nos. 2 and 3 were his subtenants. It has been further alleged that in 1950 Mahammadin and Imammuddin verbally sold away their right in the suit land along with the structures thereon to him. The defendant No. 1 accordingly has been in possession of the suit property as of right lawfully and adversely and has thus acquired, in any view of the matter, absolute title to the suit property. The defendant No. 1 has denied that he is a tenant under the plaintiff. In the suit besides Chhaganlal, his tenants have been made principal defendants Nos. 2 and 3. "Mahammadin Brothers" has been made the pro forma defendant No. 4 and one Md. Isaq has been made the pro forma defendant No. 5. Although Isaq filed the written statement, he did not, as it appears, contest the suit at the time of final hearing and moreover, there was no appeal by him against the decree of the appellate court below.

4. The learned Subordinate Judge of the trial court did not accept the plaintiff's case of abandonment of the suit premises by Mahammadin Brothers and it was held that the plaintiff after the passing of the final decree did not take delivery of possession of the suit premises. The learned Subordinate Judge also found that when the plaintiff did not obtain possession of the suit property by executing the decree passed in Title Suit No. 76 of 1953 in execution of the said decree through court, the suit was liable to be dismissed and consequently the plaintiff's suit failed. Against that dismissal of the suit, the plaintiff-company

preferred an appeal and the learned Additional District Judge allowed the appeal. On the question of fact, it was held that the plaintiff's case of abandonment of the suit property in favour of the plaintiff or the story of getting possession of the suit property amicably after the passing of the final decree was unacceptable. It was also held that the story of the defendant No. 1 that he purchased the suit property by virtue of an oral sale was not true. The defendants' case of adverse possession was not accepted. It was held by the appellate court below that the defendant No. 1 was a tenant under Mahammadin Brothers, the previous lessee under the plaintiff-company in respect of the structures on the suit land and that the defendants Nos. 2 and 3 were the sub-tenants. The learned Additional District Judge was of the view that as the defendant No. 1 was a tenant under Mahammadin Brothers, in respect of the structure alone, he was governed by the provisions of the West Bengal Premises Tenancy Act and as such he could not have been evicted by the company in execution of the decree. Accordingly it was held that there was no necessity for the company to take delivery of possession either symbolically or physically when defendant No. 1 was not bound by the decree. Next it has been held that Section 70 of the Non-Agricultural Tenancy Act is no bar to the company's starting a fresh suit against the defendant No. 1 who could not have been evicted by dint of the decree obtained by the company. In view of the findings it was held by the appellate court below that the plaintiff-company was entitled to the reliefs claimed for declaration of its title to the suit property as also for recovery of khas possession of the suit property by evicting the defendants when a notice to quit was duly served upon the defendant No. 1. There is also a decree for recovery of arrears of rent from the defendant No. 1 as mentioned.

5. Mr. S. C. Das Gupta appears on behalf of the appellant assisted by Mr. Kanan Kumar Ghosh. Mr. P. N. Mitter opposes the appeal being assisted by Mr. A. K. Bose and Mr. Rameswar Saha, the learned Advocates for respondent No. 1, the plaintiff-company.

6. In this Second Appeal we are not going to interfere with the findings of facts based upon proper evidence. It has been held that the story of abandonment of the suit properties in favour of the company by Mahammadin Brothers, the previous tenant is not acceptable and admittedly the plaintiff did not put the decree into execution. It has been further held that the defendant No. 1 was a tenant under Mahammadin Brothers in respect of the structures and that the structures were constructed by Mahammadin Brothers, a non-agricultural tenant under the company in respect of the suit land. We also get that the defendants Nos. 2 and 3 are the sub-tenants under the defendant No. 1 in respect of the structures. We also find and there is no dispute that in Title Suit No. 76 of 1953 already mentioned earlier, a preliminary decree was passed in favour of the plaintiff-company and against Mahammadin Brothers, the principal defendant in that suit and now the defendant No. 4 in the present suit for recovery of khas possession of the disputed property on payment of reasonable compensation for structures standing on the suit land and that ultimately the final decree was

signed in the said suit on 6-9-1957 in terms of the preliminary decree for recovery of khas possession of the suit property against the Mahammadin Brothers. The said final decree was passed on the 22nd day of August, 1957. There is no dispute also that for compensation the plaintiff deposited the amount determined by the court in favour of Mahammadin Brothers. The present suit was filed by the company in Oct., 1963. We accept these facts and proceed to consider the questions of law canvassed from the side of the appellants. Two questions of law have been urged from the side of the appellant to assail the judgment and the decree of the appellate court below. It has been contended by Mr. Das Gupta that in view of Section 70 of the West Bengal Non-Agricultural Tenancy Act, the plaintiff-company cannot get any relief in the present suit when it did not execute the decree obtained in Title Suit No. 76 of 1953 for recovery of khas possession by evicting the non-agricultural tenant, Mahammadin Brothers. The other point relied upon by Mr. Das Gupta is that when the company did not obtain delivery of possession, either khas or symbolical, of the suit properties in execution of the decree against Mahammadin Brothers, the said decree has become ineffective and the plaintiff can get no relief by a separate suit. For this purpose Mr. Das Gupta has relied upon Order 21, Rules 35 and 36 of the Civil P. C.

7. For the sake of convenience let us first take up the second point of law canvassed by Mr. Dasgupta. The admitted position is that the company filed the Title Suit No. 76 of 1953 on 31-3-1953 for recovery of khas possession of the disputed land from the defendant Mahammadin Brothers, a non-agricultural tenant under the provisions of the West Bengal Non-Agricultural Tenancy Act. The final decree was passed on 22-8-1957. Admittedly the company did not execute the decree and consequently it did not take possession of the disputed property either physically or symbolically. The decree obtained by the company could not be executed after the period of three years from the date of the decree under the provisions of the Limitation Act of 1908 and as such the execution was barred under Article 182 of the Limitation Act. Of course after the period of the said limitation of the present case, the Limitation Act of 1963 came into effect on 1st of Jan., 1964 after the assent of the President of India on the 5th of Oct. 1963. In the Limitation Act of 1963 Article 136 corresponds to Article 182 of the earlier Act and under the new Article the period of limitation for execution of the decree has been extended to 12 years. In the case before us the company started the present action on the allegation that Mahammadin Brothers, the non-agricultural tenant abandoned the property in favour of the company and delivered possession thereof after the final decree. This fact of getting possession of the suit property amicably or otherwise by the company has been disbelieved by both the courts and quite rightly. Now it is to be decided whether by a separate suit the company can evict the defendant No. 1, a tenant of Mahammadin Brothers, in respect of the structures under the provisions of the West Bengal Premises Tenancy Act and also the defendants Nos. 2 and 3, the sub-tenants under the defendant No. 1. The allegation in the plaint of the

present suit is that the plaintiff-company was accepted by the defendant No. 1 as his landlord after the alleged abandonment of the suit property by Mahammadin Brothers, that the sub-tenants, defendants Nos. 2 and 3 were illegally holding the premises and that the tenancy of the defendant No. 1 under the company was determined by notice to quit.

8. In order to succeed in the present suit, the plaintiff-company at the very outset is to prove that the defendant No. 1 under whom defendants Nos. 2 and 3 were sub-tenants was a tenant under the company, that is to say, it has got to be established by the company that there was a relationship of landlord and tenant as between the company and the defendant No. 1. If that fact is not proved, the plaintiff can get no relief. Mr. Das Gupta, the learned Advocate for the appellant has, therefore, argued that unless the decree, the company obtained against Mahammadin Brothers for recovery of khas possession was executed through Court within the prescribed period granted by law, the plaintiff cannot have any right in the disputed property or any relationship of landlord as between it and the defendant No. 1. Order 21 of the Civil P. C. speaks about the execution of decree and orders. Rules 30 to 40 of Order 21 relate to the mode of execution of the decree or order. For the contention of Mr. Das Gupta, we are to consider Rules 35 and 36 in particular. Sub-rule (1) of Rule 35 says that in case of a decree for delivery of any immovable property, possession thereof shall be delivered to the party claiming under the decree by removing any person bound by the decree who refuses to vacate the property if necessary. Rule 36 of Order 21 of the Civil P. C. reads as follows :

Where a decree is for the delivery of any immovable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by a beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to property.

9. The contention of Mr. Mitter for the plaintiff-respondent is that the defendant No. 1 was a tenant under the non-agricultural tenant against whom the company obtained the decree and as such the company by virtue of the decree could not have evicted the defendant No. 1 or the defendants Nos. 2 and 3 according to the provisions of the West Bengal Premises Tenancy Act. Mr. Mitter's argument is that in the said circumstances the decree could not have been executed and as such after the passing of the decree, the defendant No. 1 automatically became a tenant under the company in respect of the structures and the relationship of landlord and tenant as between the parties became ipso facto established. The contention of Mr. Mitter cannot be accepted. In view of Rr. 35 and 36 of Order 21 of the Civil P. C. read with Article 182 of the Limitation Act of 1908 of the relevant time, after the passing of the decree for recovery of khas possession of the suit property, the plaintiff was to put the decree into execution within three years from the date of the decree and if it was possible for the plaintiff to get

khas possession of the property, that could have been recovered under Rule 35 of Order 21 of the Civil P. C. and in any view of the matter a symbolical possession could have been taken by the plaintiff under Rule 36. It cannot be stated, therefore, that in the present case the plaintiff could not have taken symbolical possession of the disputed properties through Court in execution of the decree. Unless at least symbolical possession is taken in execution of the decree as provided for by law, it cannot be said that the plaintiff has effected the decree and became actually vested with the title or interest therein having a connection with a tenant of the defendant against whom the decree has been passed. In the present case, when the plaintiff did not make the decree effective by putting it into execution, it cannot claim any relationship with the defendant No. 1, a tenant under Mahammadin Brothers, the judgment-debtor whose interest the plaintiff claims. When a decree is passed in favour of a plaintiff in a suit, the plaintiff is to follow up the decree and obtain the reliefs granted by making it effective according to law prescribed. The Civil P. C. says how a decree is to be executed and if a decree is not executed according to the provisions of the Code or if the plaintiff-decree-holder allows the decree to be barred by the Limitation Act for execution, no separate suit can be filed for obtaining the same relief or reliefs or any relief based upon the decree. If such a suit is allowed, there would be the violation of the law and there would be no end of litigation. There will, in that case, be scope for frivolous litigations and unnecessary harassment and abuse of processes of Court.

10. In this connexion we may refer to the decision of the Privy Council in the case of *Mirza Mahammad Aga Ali Khan Bahadur v. the widow of Balmakaund* reported in (1876) 3 Ind App 241. That was an appeal from the judgment, and the decree of the Judicial Commissioner of Oudh. In that case the plaintiffs filed a suit resting the claim on a decree previously obtained practically to enforce the previous decree. In the appeal below, the learned Judicial Commissioner of Oudh in a portion of his judgment held :

If every decree-holder could proceed by regular suit to enforce his decree, all the provisions in the Civil P. C. in regard to executions of the decree would be of no avail. But it is evident to the Court that where the Legislature has prescribed a particular mode of enforcing a right created by a decree, the possessor of that right is bound to follow the procedure prescribed, and no other. The Judicial Committee of the Privy Council agreed with that principle and approved of it. When in the Civil P. C. there is the mandatory provision for execution of the decree as prescribed for getting the reliefs under the decree, no separate suit shall lie for vetting the reliefs under the decree by a separate suit. Clearly, therefore, when a decree is executable under the law and when the decree-holder allows such decree to become barred by law, he cannot be allowed to get the fruits of the decree by a separate action.

11. In connexion with the second contention of Mr. Das Gupta as discussed above, it is quite relevant and suitable to discuss and decide the first contention

of Mr. Das Gupta relating to Section 70 of the West Bengal Non-Agricultural Tenancy Act. The said section says, "No non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent Civil Court." This section gives protection to the non-agricultural, tenant against eviction by the landlords by force and illegal means taking law in their own hands. The provision clearly says that if a landlord wants to eject; a tenant from the land, he must obtain a decree to that effect from a competent Civil Court and then recover khas possession by evicting the tenant therefrom in execution of the said decree. Of course in case of amicable settlement between the parties or voluntary delivery of possession by the tenant, the landlord may recover khas possession. But if the tenant does not vacate the land even after the decree is passed against him by a Civil Court, then the landlord is to execute the decree and this execution of the decree means execution according to law. The words "in execution of a decree" mentioned in Section 70 of the West Bengal Non-Agricultural Tenancy Act is significant and consistent with the provision of Order 21 of the Civil P. C. In spite of the decree if the tenant does not vacate or refuses to vacate the land in question, then the remedy that lies with the landlord is to put the said decree into execution for recovery of possession by ejecting the tenant. There is, therefore, no scope again for filing a separate suit to get the benefit of the decree directly or indirectly without resorting to execution proceedings through Court and according to law.

12. Mr. Miller has argued, in order to avoid the legal points raised by Mr. Das Gupta, that the effect of the decree obtained by the company in Title Suit No. 76 of 1963 was the transfer of the tenancy right of Mahammadin Brothers as compensation was paid by the company as directed by the Court. Mr. Mitter wanted to say that when compensation was paid for the structures, it was as good as sale of the structures in favour of the plaintiff-company on payment of consideration and, therefore, as soon as decree was passed, on deposit of compensation by the company, the right, title and interest of Mahammadin Brothers, the defendant of the previous suit, passed to the company and consequently the company became the landlord of the defendant No. 1. We cannot accept the analogy of sale in the present case. The plaintiff according to the provision of the West Bengal Non-Agricultural Tenancy Act filed a suit for recovery of possession of the disputed land against the defendant, a non-agricultural tenant, on determination of the tenancy right. According to the provision of the said Act there was a direction for payment of compensation to the tenant on compliance with which a decree would be passed. In fact, according to law the plaintiff-company obtained the decree for recovery of possession for eviction of the non-agricultural tenant. We cannot hold that this was a case of transfer under the T.P. Act or otherwise by which after the passing of the decree the plaintiff would automatically become the landlord of the defendant No. 1, a tenant of Mahammadin Brothers and would be deemed to have recovered khas possession. This contention of Mr. Mitter is unacceptable.

13. In view of our discussions above, as the plaintiff did not execute the decree according to the provisions of the Civil P. C. and in view of the fact that the plaintiff did not obtain delivery of possession of the suit properties symbolically or physically according to law, there was no relationship between the plaintiff-company and the principal defendants in the matter of tenancy as alleged and as such the suit was liable to be dismissed. We accept the contentions of Mr. Das Gupta as indicated above.

14. In the result, the appeal succeeds. The judgment and the decree of the appellate court below are hereby set aside and the suit shall stand dismissed. In the circumstances of this case we direct that the parties shall bear their own costs in this appeal and also in the courts below.

Monoj Kumar Mukherjee, J.

15. I agree.