
(1996) 08 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 7808 of 1993

Chloride India Ltd.

APPELLANT

Vs

District of Judge, Puri and Others

RESPONDENT

Date of Decision : 12-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1997 Ori 135 : (1997) 84 CLT 46

Hon'ble Judges : P. Ray, J;D.M. Patnaik, J

Bench : Division Bench

Advocate : P.K. Roy, for the Appellant; S. Udgata, for the Respondent

Final Decision : Dismissed

Judgement

D.M. Patnaik, J.—This writ petition is disposed at the admission stage.

2. The petitioner, a tenant under opposite party No. 3, assails order of the executing Court in allowing the landlord's amendment in respect of Column 7 of the execution petition giving out better particulars of the premises in question and secondly, the rejection of the petition u/s 47, C.P.C. of the petitioner, as well as the revisional order of the District Judge, Puri in Civil Revision No. 95 of 1993 arising out of the question of amendment and Civil Revision No. 77 of 1993 arising out of dismissal of the petition u/s 47, C.P.C.

3. Admittedly, the opposite party-landlord put into execution the decree for eviction of the petitioner in Execution Case No. 23 of 1991 in respect of the suit premises described in detail in the petition of the House Rent Case No. 5 of 1987 after the petitioner tenant lost the case in all the forums including the Supreme Court vide SLP (Civil) No. 13279/92 disposed of on 9-11-92. The petitioner filed Misc. Case No. 11/93 u/s 47, C.P.C. challenging the executability of the decree wherein he denied the title of the opposite party landlady to the property on the ground that her name was not recorded in the R.O.R. The other ground for holding the decree as inexecutable was because of the wrong description of the

property in question.

4. Heard Mr. P. K. Ray, learned counsel for the petitioner-tenant and Mr. S. Udgata, learned counsel for opposite party No. 3, the landlady.

Mr. Ray did not press the point raised before the courts below that the amendment which is the subject matter of Revision Case No. 95 of 1993 would have the result in changing the nature of the ease. Therefore, the orders in that respect are confirmed and this disposes of the Civil Revision No. 95 of 1993.

5. With regard to the rejection of the petition u/s 47, C.P.C. which is subject matter of Civil Revision No. 77 of 1993, Mr. Ray did not press the point in regard to the absence of title of the landlady in respect of the premises in question. He, however, pressed the only point in regard to the indefiniteness and ambiguity in description of the premises in question.

While dealing with this point, the learned counsel pointed out that there has been interpolation and/or manipulation of the court's record inasmuch as according to him, in the original petition the figure "965" occurring in para 4(a) has been substituted by way of overwriting the figure "970" and this has therefore prejudicially affected the tenant's case.

6. Having heard Mr. Roy on this point and having gone through the original petition as pointed out by the learned counsel, I am of the view that it would not be proper for this Court to embark on the disputed fact relating to interpolation and/or manipulation in the absence of any material whatsoever. Therefore, this submission of Mr. Ray is not accepted.

7. The main thrust of argument of Mr. Ray is that the description of the premises is question being ambiguous and indefinite, the decree cannot be executed. The learned counsel advanced an extensive argument on this point and referred to various decision, but relied on the decision reported in Roy and Co. and Another Vs. Sm. Nani Bala Dey and Others, , Rama Subudhi and Others Vs. Bhagirathi and Others, , Nand Subudhi v. Bhagirathi.

Mr. Udgata, learned counsel for the opposite party No. 3, on the other hand, countered the argument of Mr. Ray to the legal proposition as well as to the facts of the case and in support of such contention he relied on the judgments reported in Mst. Zenab Bi Vs. Wajahat Husen Karamat Hussain, ; 39 1973 CLT 112, Nityananda Naiko v. Radhamohan Panda; Jaisingh " Gujarmal Salopal Vs. Smt. Rajendra Kaur and Others, and the decision of this Court in Misc. Appeal No. 92 of 1965, Chintamani Sahu v. Nilaraani Das (disposed of on 24-7-68.

The rival contentions need careful examination.

8. In Item 4 of the original H.R.C. petition the opposite party No. 3 described the premises in question stating that she was the rightful owner of the premises in question which is a double storeyed brick building standing on an area of 8223 square foot over a portion of plot No. 965 under Jamabandi No. 296 of Moua

Balukhanda, Sea Beach Puri, Block No. 1, within Puri Municipality, bounded on the east plot No. 965, west plot No. 964, north west portions of plot No. 970, south plot No. 965" and the aforesaid building consisted of 7 living big rooms, 5 latrines and 4 bath rooms with verandahs, the Municipal holding No. being 2514/1112/1. In the written statement the petitioner did not challenge this description of the premises in question with regard either to the plot Nos. or to the boundaries stating that the description suffered from any indefiniteness, except of course denying the fact that there existed 7 living rooms and 4 latrines.

9. Mr. Ray submitted that in the H.R.C. petition the eastern boundary of the premises which is a portion of plot No. 965 was shown to be plot No. 970 which according to the learned counsel was substituted by interpolation as plot No. 965. I have already held that there is no material to hold that there was interpolation. Therefore, the correct position is that the disputed premises was shown to be bounded on the east by rest portion of plot No. 965, west plot No. 964, north plot No. 970 and south rest part of plot No. 965. Therefore, I cannot accept the contention of the learned counsel for the petitioner that the decree should be defeated as inexecutable because of indefiniteness. The three-side boundaries are admitted by the petitioner to be correct. That apart, the premises bears a municipality holding number which itself makes it easily identifiable.

10. I have no quarrel over the proposition of law laid down by this Court in the case of 1982 Orissa (supra) and 1979 Calcutta (supra). Therefore, it is not necessary to discuss those decisions since in the case at hand I am of the opinion that the description or the identity of the premises in question does not suffer from any indefiniteness or ambiguity. Rather it is appropriate to rely on the single Bench decision of this Court in Misc. Appeal No. 94/65 (disposed of on 24-7-68) referred to by Mr. Udghata where this Court held that because of the mentioning of a plot number by mistake, the execution of the decree in a house rent control case cannot be defeated.

It will be appropriate to refer to the decision reported in the case of Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another, where the Court held as follows (at page 1374):

"It is true that as executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree, the court often has to ascertain the circumstances under which these words came to be used. That is the plain duty of the executing court and if that court fails to discharge that duty it would be deemed to have failed to exercise the jurisdiction vested in it."

The above decision has been appropriately followed in the single Bench decision of this Court reported in 62 1986 CLT 112, Biswanath alias Bisu Naik v. Smt.

Uttara Bewa.

11. For the reasons indicated above, there is no merit in the writ petition and the same is dismissed with cost of Rs. 1,000/- (Rupees one thousand) in this Court.

Pradipta Ray, J.

12. The present case is another illustration of the old adage that ordeal of a litigant in this country begins after he obtains a decree. Opposite party No. 3 filed H.R.C. Case No. 5/87 for eviction of the present petitioner from the premises described in the application u/s 7(4) of the Orissa House Rent Control Act, 1967. She obtained an order for eviction of the present petitioner on March 30, 1991. The said order of eviction was upheld by the Supreme Court. After obtaining order of eviction from the House Rent Controller, Puri, opposite party No. 3 put the decree into execution in Execution Case No. 23/91. She has not yet been able to obtain possession of the concerned premises.

13. In the present civil revision as many as 42 grounds have been included to assail the impugned order with a view to preventing execution of the order of eviction. Most of the pleas are circuitous attempts to reopen the case on merits and ex facie beyond the scope of an execution proceeding. Only one of the grounds deserves consideration.

14. The ground which deserves consideration is whether by amendment of the execution petition the decree-holder opposite party No. 3 is seeking to get possession of a premises different from the premises in respect of which eviction has been ordered in the H.R.C. case. It is a settled proposition that execution court cannot permit execution of a decree different from the decree passed by the appropriate competent court. In the present case, this Court is not at all satisfied that any premises different from the subject-matter of H.R.C. case is being sought to be recovered.

15. Description of the disputed premises as mentioned in the petition under the H.R.C. Act has been quoted in para 8 of the judgment of learned brother D. M. Patnaik, J. On a perusal of the original petition in the records of the H.R.C. case, it appears that at several places of the original petition corrections of typing errors were made by hand. Although the petitioner has alleged that the correction with regard to the eastern boundary was a subsequent interpolation, it is not possible for this Court to enter into any such disputed question at this stage. Moreover, the corrections do not appear to be anything unnatural or suspicious inasmuch as corrections were not confined only to the description of plot number to the east of the disputed premises, but several other corrections were made in hand-writing with initials. Taking the whole petition and looking at all the corrections it appears that corrections are usual and natural. Description as corrected in the H.R.C. case also failed with the description contained in the deed of lease granted by the State of Orissa and the opposite party No. 3. Everywhere it has been stated that to the east of the premises in question is a portion of plot No. 965. In the body of the judgment in H.R.C. case it has been

mentioned that the tenanted house is situated on plot No. 965 of Chakratirtha Road within Puri Municipality. In the written statement before the H.R. Controller the petitioner never raised any dispute regarding the description of the premises. It is also not the petitioner's case that it has got any other tenancy on plot No. 965. The petitioner fought up to the Supreme Court and at no stage he questioned the description of the suit property or put forward any case that description was vague or indefinite or the petitioner was trying to evict from any premises other than the premises of which it was the tenant.

16. By amendment opposite party No. 3. inserted only that description which was given in the H.R.C. petition and in respect of which, House Rent Controller passed the order of eviction. It appears that original execution petition did not contain any detailed description of the premises in question. The decree-holder-opposite party No. 3 did not change or alter or substitute any description, but merely supplied the description to rectify an omission. If the decree holder had sought to introduce a description different from the description given in the H.R.C. petition the judgment-debtor-petitioner might have a legitimate grievance. In the facts and circumstances of the present case the description introduced by amendment is in conformity with the description given in H.R.C. petition. Thus, the Executing Court did not commit any error in allowing the amendment and the District Judge rightly rejected the petitioner's application u/s 115, C.P.C.

17. The decisions referred to by the learned counsel for the petitioner are not applicable in view of the facts stated hereinbefore.

18. I fully agree with the learned brother D. M. Patnaik, J. that this application under Article 227 of the Constitution of India is liable to be rejected.