
(2006) 05 AHC CK 0276
In the Allahabad High Court
Case No : C.M.W.P. No. 25430 of 2006

Dharam Singh

APPELLANT

Vs

Kairaj Singh and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 9 Rule 13

Citation : (2006) 4 AWC 3218

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : I.P. Singh, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard the learned Counsel for the petitioner.

2. An ex parte decree in a suit for specific performance of contract was passed against the petitioner on 30.4.1993 and an application preferred under Order IX, Rule 13, C.P.C. for setting aside the such decree by the petitioner was dismissed by the trial court on 10.12.1993. Petitioner's appeal against the said dismissal order was also dismissed on 28.7.1998 whereafter no challenge against the ex parte decree was made before any Court or competent forum and that decree has become final.

3. Learned Counsel for the petitioner contends that after the dismissal of petitioner's appeal there was some compromise in a panchayat between the parties on 20.10.1998 but admittedly that compromise was not brought to the notice of the Court. The decree holder respondents thereafter approached the executing court through an execution application dated 2.11.1998 and that matter is still pending. The petitioner gave an application dated 13.9.2005 before the executing court for adjustment and satisfaction of the decree on the basis of the aforesaid compromise which has been dismissed by the impugned order dated 8.2.2006. The revision filed against the said order before the District Judge

has also been dismissed by the Impugned order dated 28.4.2006 (Annexure-14).

4. Learned Counsel for the petitioner contends that since the parties had entered into compromise before panchayat in the year 1992, the petitioner did not have any doubt in his mind as to the satisfaction of the decree of the Court and as such he did not approach the Court for verification of such compromise and in the aforesaid background the petitioner has also executed a sale deed of the property in suit in the year 2003.

5. A perusal of the orders of the courts below makes it clear that they have thoroughly discussed all the relevant points relating to that matter and have also considered the petitioner's claim of his bona fide and found the same as not acceptable. The decree of specific performance of contract passed between the parties has already become final and its satisfaction through a panchayat was not feasible under law. If this satisfaction was to be recorded it was possible only under Order XXI, Rule 2, C.P.C. which specifically provides that any satisfaction of decree outside the Court shall have to be verified by the parties before the Court and the same has to be recorded by the court. In absence of such mandatory procedure having not been adopted by the petitioner, the courts below appear to be wholly justified in not accepting the contention of the petitioner, and thus rejecting his prayer for adjustment of the decree after lapse of about seven years.

6. I do not find any error in such orders and the same cannot be interfered with in writ jurisdiction of this Court.

7. The petition having no force is hereby dismissed.