
(1977) 07 AHC CK 0024
In the Allahabad High Court
Case No : Civil Revision No. 1473 of 1975

Ganga Prasad and Others

APPELLANT

Vs

Ram Saran and Others

RESPONDENT

Date of Decision : 11-07-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 101, Order 21 Rule 103, 115

Citation : AIR 1978 All 43 : (1977) AWC 457

Hon'ble Judges : Yashoda Nandan, J

Bench : Single Bench

Advocate : L.P. Singh, for the Appellant; Vinod Chand Misra and Prahlad Upadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Yashoda Nandan, J.—This revision at the instance of the decree-holders arises out of an objection under Order 21, Rule 99 of the C.P.C. (hereinafter referred to as the Code).

2. Material facts giving rise to this revision are that House No. 47/99, Hatia, Kanpur was joint property of opposite parties 2 to 5. A suit for partition of this house was filed in the court of the 1st Civil Judge, Kanpur, who had territorial jurisdiction to entertain and decide the suit. It was subsequently transferred to the court of the II Civil judge, Kanpur who ultimately passed the decree in the suit. In that partition decree, the premises in dispute in the present proceedings, were allotted to the share of Ganga Prasad, Jamuna Prasad and Smt. Ram Kali, the applicants in the revision. They put the decree into execution and obtained delivery of possession of the property in question on the 5th April, 1969. Ram Saran, opposite party No. 1, filed an objection under Order 21, Rule 100 of the Code in the court of the learned II Civil Judge, Kanpur against his dispossession from the premises in dispute on the ground that he was a person in occupation of the premises in dispute not through or on behalf of any of the judgment-

debtors but was in possession in his own right as a tenant thereof. It was also contended by Ram Saran that since the subject-matter of the dispute was immovable property which was situate within the territorial jurisdiction of the court of learned I Civil Judge, Kanpur, the learned II Civil Judge had no jurisdiction to execute the decree passed by him in the capacity of a transferee court. The objections raised by Ram Saran failed to find favour with the learned II Civil Judge, Kanpur, who accordingly rejected them. Ram Saran filed a revision in the court of the learned District Judge, Kanpur, which was disposed of by the learned I Additional District Judge, Kanpur. The revision was filed only on the ground that the court of first instance had no jurisdiction to execute the decree because the subject-matter of the dispute was situate within the territorial jurisdiction of the learned I Civil Judge, Kanpur. It may be mentioned here that the learned II Civil Judge while disposing of the objection, recorded a clear finding of fact that Ram Saran was not the tenant of the premises in dispute and was not in possession in his own right.

3. The revision was allowed by the court below which set aside the order of the learned II Civil Judge, Kanpur, rejecting the objection of Ram Saran under Order 21, Rule 100 of the Code. The court below directed Ram Saran to be restored to possession of the disputed premises and to be permitted to remain in possession thereof till the decree is put into execution in a court of competent jurisdiction. Aggrieved by the order of the court below, the decree-holders have filed this revision.

4. The only question urged by the learned counsel appearing on behalf of the applicant is that in an objection under Order 21, Rule 100 of the Code, the court concerned has to decide the objection on the assumption that the decree was passed by a court of competent jurisdiction and had also been executed by a court of competent jurisdiction. It was contended that in proceedings arising out of an objection under Order 21, Rule 100 of the Code, the jurisdiction of the Court is confined to deciding the question as to whether the objector was in possession of the property on his own account or on account of some person other than the judgment-debtor or not. It was urged that while deciding an objection under Order 21, Rule 100 the Court can direct under O, 21, Rule 101 that the objector be put into possession of the property only if it is satisfied that he was in possession of it on his own account or on account of some person other than the judgment-debtor and not on the ground that the decree had been passed or executed by a court which had no jurisdiction over the subject-matter of the proceedings. It was submitted that in the instant case the learned Civil Judge, Kanpur, had recorded a categorical finding of fact that Ram Saran was not in possession of the disputed property on his own account or on account of some person other than the judgment-debtor and this finding had remained unchallenged during the revision before the court below. Learned counsel appearing on behalf of the applicants submitted that it was not open to the court below to have allowed the revision on the ground that the decree had been executed by a transferee court which had no territorial jurisdiction over the

property forming subject-matter of the decree. Learned counsel appearing on behalf of opposite party Ram Saran, on the other hand, contended, with vehemence, that if there is inherent want of jurisdiction in the court to pass a decree or to execute it, an objection in this respect can be taken in any proceeding at any stage. Learned counsel appearing for the contesting opposite party cited certain authorities in support of his submission which it is unnecessary to mention in this judgment. Assuming that the contention of the learned counsel appearing on behalf of opposite party Ram Saran is correct that where there is a patent want of jurisdiction in a court, the decree passed or executed by it can be challenged in any proceeding at any stage in view of the decision of the Supreme Court in *Seth Hiralal Patni Vs. Sri Kali Nath*, it is no longer open to argument that want of territorial jurisdiction is a question of inherent lack of jurisdiction. In this view of the matter the contention of the counsel for Ram Saran that irrespective of the language employed in Order 21, Rule 100 and Order 21, Rule 101 of the Code in an objection filed under Order 21, Rule 100 it is open to an objector to challenge the territorial jurisdiction of the court which executed the decree, must be rejected. To appreciate the argument raised by the learned counsel for the applicants, it is necessary to examine the language employed in Order 21, Rule 100 and Order 21, Rule 101 of the Code, which run as follows:-- Order 21, Rule 100.

"(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same."

Order 21, Rule 101.

"Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property."

5. A perusal of Order 21, Rule 100 discloses that an objection under that provision can be filed only by a person other than the judgment-debtor where he is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof complaining of such dispossession. Under Clause (2) of Order 21, Rule 100, the court is required to fix a day for investigating the matter and for summoning the party against whom an application is made to appear and answer the same. Order 21, Rule 101 clearly provides that where the court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property. It is thus apparent that the

satisfaction of the court is confined to the question as to whether the objector was in possession of the property on his own account or on account of some person other than the judgment-debtor. Order 21, Rule 101 does not contemplate the court deciding any other question in such proceedings. It has to be borne in mind that the proceedings, following an objection under Order 21, Rule 100, are summary in character and the decision therein is subject to a suit under Order 21, Rule 103. It was conceded by the learned counsel appearing on behalf of the applicants that if the jurisdiction of the court which executed the decree has to be challenged by a person claiming to be in possession on his own behalf and not on behalf of the judgment-debtor, he may file a regular suit challenging the execution proceedings. In my opinion, the language of Order 21, Rule 101, clearly bears out and supports the contention raised by the learned counsel for the applicants. No direct authority was cited by learned counsel for either parties in support of their respective contentions. In my judgment while deciding an objection under Order 21, Rule 100, it is not open to a court to pass an order of the nature envisaged by Order 21, Rule 101 on the ground that the execution court had no territorial jurisdiction over the subject-matter of the property involved.

6. Learned counsel appearing on behalf of the contesting opposite party supported the order of the court below contending that it was the duty of the court to determine as to whether the objector was in possession in his own right or not and the revisional court had failed to decide this question. It was urged that there was no bar to the revisional court entering into that question of fact and reversing the finding recorded by the trial court. The contention, in my opinion, is unsound and must be rejected. The question as to whether the objector is in possession in his own right or not is a pure question of fact to be decided on the basis of the evidence led by the parties. In a revision u/s 115 of the Code, neither the court below nor this Court has any jurisdiction to reverse a finding of fact recorded by the court of original jurisdiction except perhaps in certain exceptional cases. In any event, in the instant case, the memorandum of revision filed in the court below reveals that there was no challenge to the finding recorded by the court of original jurisdiction.

The judgment of the court below also discloses that even during arguments, the finding of fact with regard to the nature of possession of opposite party Ram Saran was not challenged. Learned counsel appearing on behalf of opposite party Ram Saran attempted to persuade me to hold that the learned II Civil Judge had overlooked the documentary evidence produced by Ram Saran in support of his claim that he was in possession in his own right as a tenant of the premises. I have gone through the entire judgment with the counsel and I do not find it possible to hold that the learned II Civil Judge, Kanpur acted arbitrarily or in disregard of the material evidence on record while deciding the nature of possession over the premises in dispute of opposite party Ram Saran.

7. For the reasons given, I allow this revision. The impugned order of the I

Additional District Judge, Kanpur, dated 25-8-1975 is set aside. The interim orders dated 3-12-1975 and 11-10-1976 are hereby vacated. If there is any other interim order passed in this proceeding, that shall also stand vacated. The applicants will be entitled to their costs from opposite party No. 1. The record of the case will be sent down to the court below at a very early date.