

(2011) 12 J&K CK 0037

In the Jammu And Kashmir High Court

Case No : C. Rev. No. 86 of 2011 and CMP No. 316 of 2011

Haji Gh. Mohammad Dangroo

APPELLANT

Vs

Waheeda Sultan and Another

RESPONDENT

Date of Decision : 30-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : (2011) 12 J&K CK 0037

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Judgement

Hon'ble Mr. Mohammad Yaqoob Mir, Judge

1. Suit for permanent prohibitory injunction titled Ghulam Mohammad Dangroo alias Dar v. State & ors, as was pending on the file of learned

Sub-Judge, Budgam, has been disposed of in terms of contents of the compromise arrived at in between petitioner (hereinafter referred to as

plaintiff) and the respondent No.2 (hereinafter referred to as defendant No.3), in the process defendants No.1 and 2 therein were deleted from the

array of defendants. In the suit plaintiff had claimed to have purchased 2 kanals 2 marlas of land covered by survey No.1095 situated at Badipora

Chadoora, in view of the interference in the hands of defendant No.3, sought permanent restraint order against the defendants so as to prohibit

them from interfering with the possession.

2. In terms of the compromise, the suit land measuring 2 kanals 2 marlas was stated to be in ownership of defendant No.3 but out of the same 2

marlas were to be given by the defendant No.3 to the plaintiff. In lieu thereof, plaintiff had to provide 12 feet path from the southern side of the

cow shed in favour of defendant No.3. In addition to the suit property i.e. 2 kanals 2 marlas of land, other properties which were not the subject

matter of the suit were also settled in terms of the compromise i.e. it was resolved that the defendant No.3 being the co-sharer shall be handed

over the share by the plaintiff up to 31st of December, 2007 at one place. In lieu thereof, the defendant No.3 was to surrender the share out of the

ancestral house at Badipora to the extent of the share of the plaintiff in his favour. The house at Jammu was declared to be given to plaintiff but the

defendant No.3 was under obligation to see that the tenants are evicted from the said house. It was also a condition that if any of the party desires

to alienate any part of the property, same shall be sold to other party. An important condition was also incorporated to the effect that in case

parties will not abide by the compromise, then compromise in part shall not be enforceable. Based on the said compromise trial court has decreed

the suit and decree sheet has been prepared.

3. Defendant No.3 has sold the land measuring 2 kanals 2 marlas covered by survey No.1095 in favour of respondent No.1 Waheeda Sultan.

Noticing the same, plaintiff filed three applications, one for execution of the decree, second for setting aside the sale deed executed in favour of

respondent No.1 and third for grant of injunction u/s 151 CPC so as to restrain defendant No.3 from creating third party interest.

4. Learned trial court while considering first application for execution has noticed all the features of the case and held that the plaintiff in violation of

the terms of the compromise had sold 8 kanals of land, therefore, has concluded that when the plaintiff himself is a violator, he cannot seek

enforcement of the decree partly for the violation committed by the defendant No.3. The decree, in the said background, has been held to be

inexecutable. In addition has noticed that the petitioner had filed a suit which is pending where he had staked claim for purchasing land measuring 2

kanals and 2 marlas under survey No.1095, when he failed to get any interim relief in the application for interim injunction, he has filed the instant

application for execution.

5. Learned executing court has noticed that para 6 of the compromise provides that the parties shall be bound to honour the compromise and in

case of violation, compromise shall not be binding on the parties and shall be in-

executable. While dismissing the application for execution, the other two applications automatically were found to be untenable, as such, were dismissed.

6. Both the learned counsel for the parties referred to the contents of the compromise deed and other allied documents. Learned counsel for the defendant No.3 and respondent No.1, amongst others, raised the plea that the revision petition is not maintainable because in case order would have been in favour of the petitioner, then the proceedings in execution petition would be carried forward and in such eventuality application for setting aside the sale deed and application for grant of injunction, as were filed by the plaintiff, could be considered, so in short proceedings in execution petition and two ancillary applications would revive which in turn would mean that the execution proceedings would not get terminated.

When it is so, bar as contained in Proviso to Section 115 CPC operates.

7. In opposition, learned counsel for the plaintiff would contend that in case order would have been in favour of the plaintiff, the decree would have been executed and in that eventuality also execution proceedings would terminate.

8. For appreciating controversy, it shall be relevant to quote Proviso to Section 115 of the Code of Civil Procedure:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

9. There is no quarrel on the point that if the proceedings would terminate by passing the order in favour of the revisionist, then revision petition is maintainable otherwise not. Submission of the learned counsel for the defendant No.3 and respondent No.1 has a prevailing force because if the decree would have been held to be executable, then steps for its execution were to be resorted to and as a necessary corollary proceedings in ancillary applications for setting aside sale deed and for granting injunction would commence. So in any case proceedings in both execution petition as well as ancillary applications would revive for continuation and determination, therefore, proceedings would not terminate. When it is so, bar as

contained in Proviso to Section 115 of the CPC clearly operates. Revision petition, as such, is held not maintainable, shall stand dismissed as such

along with connected CMP.

10. Copy of the order along with subordinate record be sent to the trial court for information.