

(2013) 03 MP CK 0102
In the Madhya Pradesh High Court
Case No : Civil Revision No. 332 of 2004

Hari Singh and Others

APPELLANT

Vs

Sudhir Singh and Others

RESPONDENT

Date of Decision : 07-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, 115

Citation : (2013) ILR (MP) 1478 : (2013) 2 JLJ 104 : (2014) 3 MPHT 57 :
(2013) 3 MPLJ 277

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; G.S. Ahluwalia for Respondents No. 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—This revision application u/s 115 of the CPC has been filed by the applicants against the order dated 30.4.2004 passed by learned Executing Court dismissing the execution application being satisfied in its full satisfaction. Gopal Singh (respondent No. 3), Harisingh (applicant No. 1) and Smt. Kusum Bai (respondent No. 4) filed a suit for possession in respect to certain immovable property on the basis of title and also for injunction. This suit was filed against Suresh Singh, Sudhir Singh and Smt. Ahilya Bai. The suit was decreed on 12.4.1988 and a joint decree of possession and injunction was passed against all the defendants. In appeal the said decree was affirmed and Second Appeal No. 341/1996 was also dismissed by this Court on 19.8.1996. Thereafter, the decree was put to execution. In the execution proceedings the name of judgment debtor No. 2 Ahilya Bai widow of Narayan was deleted and in her place names of present applicants No. 2 to 5 were added as judgment debtors.

2. An application under Order XXI rule 2 CPC was submitted by judgment debtors Sudhir Singh (respondent No. 1) and Shashikala Bai (respondent No. 2) that they have handed over the vacant possession of Block No. 1 and 2, Well,

Badi and open courtyard to the decree holders Gopal Singh and Kusum Bai and now the judgment debtors Sudhir Singh and Shashikala are not required to hand over possession of any portion of the decretal immovable property to decree holders Gopal Singh and Kusum Bai and, therefore, it has been prayed that because decree has been fully satisfied the same be dismissed in its full satisfaction.

3. The decree holders Gopal Singh and Kusum Bai (respondents 3 and 4) admitted the contents of the application filed on behalf of the aforesaid judgment debtors and stated that they have received the possession of the Block No. 1 and 2 and also that of Well, Badi and open courtyard from Sudhir Singh and Shashikala. They also submitted their acknowledgment dated 15.9.1996 in this regard indicating therein that they have received the possession from the aforesaid judgment debtors Sudhir Singh and Shashikala.

4. However, the aforesaid application was opposed by one of the decree holder Harisingh (applicant No. 1) and other applicants No. 2 a to 5 and it has been specifically averred in the reply that the possession has not been handed over to aforesaid decree holder and, therefore, it has been prayed that this application be dismissed.

5. The learned Executing Court after hearing the learned counsel for the parties dismissed the execution application since it has been satisfied fully. In this manner this revision application has been filed by the applicants.

6. The contention of Shri Umesh Trivedi, learned counsel for the applicants is that since a joint decree of immovable property and injunction has been passed against the judgment debtors, therefore, even if two decree-holders out of three have admitted the contents of the application of the judgment debtors by saying that they have obtained the possession of the decretal portion mentioned in the application, the execution application cannot be dismissed in full satisfaction because there is no admission of the third decree holder Harisingh (applicant No. 1) in this regard. Learned counsel submits that when a joint decree is passed it should be satisfied in full satisfaction only if the application is submitted by all the decree holders. Learned counsel submits that in the decree the interest of the decree holders is not defined and, therefore, it cannot be said that decree has been satisfied in full satisfaction. In support of his contention, learned counsel has placed heavy reliance upon the decision of Supreme Court Jagdish Dutt and Another Vs. Dharam Pal and Others, , and Single Bench decision of this Court Mst. Kunjbala v. Mst. Annapurna [1966 MPLJ SN 19].

7. On the other hand, Shri G.S. Ahluwalia, learned counsel appearing for the respondents 1 and 2 argued in support of the impugned order and submitted that because the applicant No. 1 Hari Singh himself has sold his share to applicants 2 to 5, therefore, the possession of remaining portion of the decretal property has been handed over to other two remaining decree holders namely, Gopal Singh and Kusum Bai and thus, the decree is fully satisfied. In support of

his contention, learned counsel has placed heavy reliance on the Supreme Court decision *India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead)* by Lrs. Smt. Savitri Agarwalla and Others,

8. Having heard learned counsel for the parties I am of the view that this revision deserves to be allowed.

9. Before considering the rival contentions of learned counsel for the parties it would be relevant to mention that a suit was filed by Gopal Singh, Harisingh and Smt. Kusum Bai praying therein that a joint decree for the property described in the plaint be passed in their favour. Learned trial Court on 12.4.1984 decreed the suit by passing the following decree:

This decree had attained finality upto this Court since the second appeal filed on behalf of the defendants was dismissed.

10. On bare perusal of the decree it is gathered that the decretal portion consists of three blocks which has been denoted as in the plaint map. The possession of the decretal portion shown therein has been directed to be handed over to plaintiffs and further a decree of injunction has been passed in regard to the immovable property the description whereof has been mentioned in clause (b) of the decree. On bare perusal of the record of the Executing Court it is gathered that all the decree holders sold a part of the decretal portion to Smt. Swarajrani. By executing another sale-deed on the same date they also sold the part of the decretal portion to Sanjeev Kumar; by executing third sale-deed the part of the suit property was sold to Rakesh Kumar; the decree holders also sold a part of suit property to Brajesh Kumar and they also sold the part of the decretal portion to Sudhir Singh. Thus, by executing five sale-deeds to different persons on 15.7.1988 and 16.7.1988 the entire suit property and the decretal portion was sold to applicants 2 to 5. On bare perusal of aforesaid sale-deeds this Court finds that the factum that the decree holders are the owners of the entire suit property by virtue of judgment dated 12.4.1988 has been mentioned in all the sale-deeds. Hence, the applicants 2 to 5 have been added as party in the execution application.

11. Since, a joint decree of possession and injunction has been passed in favour of all the three decree holders, unless and until the possession of the entire decretal suit property is given to all the three joint decree holders it cannot be said that the decree has been satisfied in full satisfaction even if the possession of the decree of part of the suit property has been given to two decree holders i.e. respondents No. 3 and 4, namely, Gopal Singh and Kusum Bai respectively. From the impugned order it is gathered that as per the averment made in the application by the judgment debtors Sudhir Singh and Shashikala that decree holders Hari Singh has already handed over his share to the purchaser and, therefore, now because the judgment debtors 3 and 4 have delivered the possession of remaining portion of the decretal property to the decree holders Gopal Singh and Kusum Bai, therefore, decree has been fully satisfied. According

to me, whether there was a partition in the family of decree holders or not and if there was a partition whether decree holder Hari Singh handed over the possession of his share in the year 1994, as stated by the judgment debtor in their application are disputed questions of fact and, therefore, when it is denied by the decree holder Hari Singh and other applicants 2 to 5 it cannot be said that the possession of his share has been delivered by Hari Singh to the applicants 2 to 5. The Supreme Court in Jagdish Dutt (supra), has categorically held that where the interest of the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the rights of the parties by an appropriate decree in a partition suit. The Supreme Court further held that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. Hence, according to me, a joint decree can be satisfied only if it is executed as a whole and, therefore, the learned Executing Court has acted illegally with material irregularity in exercise of its jurisdiction by dismissing the execution application in its full satisfaction. The decision of M/s. India Umbrella Manufacturing Co. (supra), placed reliance by learned counsel for the respondents 1 and 2 is not against the applicants because in this decision also it has been decided that unless and until the share is defined and partition has taken effect the execution cannot be dismissed in full satisfaction. Resultantly, this revision application succeeds and is hereby allowed with costs. The impugned order is hereby set aside and the learned Executing Court is hereby directed to proceed with the execution. The respondents 1 and 2 shall bear the cost of the applicants. Counsel fee Rs. 2,000/-, if pre-certified.