

(2019) 09 JH CK 0073
In the Jharkhand High Court
Case No : Writ Petition (c) No. 885 Of 2016

Hiraman Prasad

APPELLANT

Vs

Ramni Devi And Ors

RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 47, 151, Order 21 Rule 97, Order 21 Rule 98, Order 21 Rule 99, Order 21 Rule 101, Order 21 Rule 102, Order 21 Rule 103
Constitution Of India, 1950 — Article 227

Citation : (2019) 09 JH CK 0073

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Amar Kumar Sinha, Sandeep Verma, Rajesh Kumar, Apoorva Singh, Gaurav Raj

Final Decision : Disposed Of

Judgement

1. This writ petition is under Article 227 of the Constitution of India whereby and whereunder order dated 14.07.2015 passed in Execution Case No. 18 of 2014 by Senior Civil Judge No.1, Hazaribagh has been assailed by which the executing court has passed an order for submission of format of deed regarding authorization of Nazir to execute sale deed on behalf of the court which has been recalled under the provision of Section 151 of the Code of Civil Procedure with a direction upon the decree holder to amend the proposed format of the sale deed and mention the caste of the decree holder/vendee and judgment debtor/vendor in the said format of the sale deed, because without mentioning caste of the decree holder/vendee and judgment debtor/vendor decree is not executable and further the decree holder has been directed to submit affidavit as to whether judgment debtor has previously obtained sanction of the Deputy Commissioner to transfer his right in his holding or a portion of his holding by sale.

2. Mr. Amar Kumar Sinha, learned counsel appearing for the petitioner has submitted that the executing court has transgressed its jurisdiction in passing

such order as because the executing court is only required to execute the decree as per its tenor and not to deviate with the decree but the executing court has not only directed the petitioner to mention the caste of the decree holder/vendee and judgment debtor/vendor as in absence thereof holding the decree not executable, rather also directed to file affidavit with respect to the permission of sanction of Deputy Commissioner to transfer his right in his holding or a portion of his holding by sale.

3. None appears for the Respondent Nos. 1 to 5 although name of Mr. Jyoti Prasad Sinha is reflecting in the daily cause list as also no affidavit has been filed.

4. Mr. Rajesh Kumar, learned counsel has put in appearance to represent the Respondent Nos. 6 and 7. He submits that the executing court has not passed an order in the nature which can be said to be improper, rather, the direction has been passed to amend the format of the sale deed so that there may not be hindrance in execution of decree and as such the same requires no interference by this Court under its supervisory jurisdiction conferred under Article 227 of the Constitution of India.

5. After having heard the learned counsel for the parties and after going through the pleadings made in the writ petition, the factual aspect which requires to be reflected herein as per the pleading made in the writ petition is that a suit has been filed for performance of an agreement to sale dated 26.07.2011 to be executed by the defendant in favour of the plaintiff which was registered as Title Suit No. 126/2012. The aforesaid suit has been decided by judgment dated 25.01.2014 (Annexure-1). The decree has been passed by directing the defendants to execute the sale deed in favour of the plaintiff failing which the same would be executed through the process of court and delivery of possession would also be provided.

6. The petitioner/plaintiff has filed one execution case being Execution Case No.18 of 2014. The respondents, after being called upon by the executing court, have put their appearance and filed show cause. The executing court has passed an order on 14.07.2015 to the effect that the petitioner/plaintiff has been directed by invoking the jurisdiction conferred under Section 151 C.P.C. by recalling the acceptance of format of the deed as has been accepted vide order dated 06.09.2014 and the authorization of Nazir to execute sale deed on behalf of the court with a direction to amend the proposed format of sale deed and mention the caste of the decree holder/vendee and judgment debtor/vendor in the said format of the sale deed as because, according to the executing court, due to absence of the reference of caste of the decree holder/vendee and judgment debtor/vendor decree is not executable. The further direction has been passed upon the decree holder to submit affidavit as to whether the judgment debtor has previously obtained sanction of the Deputy Commissioner to transfer his right in his holding or a portion of holding by sale and thereby the execution case is not proceeding, against which the petitioner has approached to this Court by way of the instant writ petition in which upon notice being issued to the

respondents, the appearance has been made.

7. It needs to be referred herein the power of the executing court as has been provided under Order XXI of the C.P.C. which contains the provision for execution of decrees and orders. The power of the executing court is to execute the decree rendered by the court of first instance without deviating therefrom unless reversed by the higher forum. If the judgment debtor is having any objection regarding the decree which is sought to be executed, provision has been provided to make an objection either under Section 47 or under Order XXI Rule 97, 98 and 99. The provision of Section 47 of the C.P.C. confers power upon the executing court to determine the questions in case of any objection being raised. Likewise, under the provisions of Order XXI Rule 97, 98 and 99 the objection can be filed to be decided by the executing court. The scope of Section 47, although that is not the case herein but for the sake of reference the same is being referred, is very limited and the executing court while determining the objection is having very limited scope save and except if the judgment and decree will be declared to be nullity as has been dealt with by the Hon'ble Supreme Court in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors. reported in (1970) 1 SCC 670.

"47. Questions to be determined by the Court executing decree.-

(1) All question arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Section 47 of the Code of Civil Procedure confers power upon the executing Court to determine a question if arises between the parties in the suit in which the decree was passed or their representative relating the execution, discharge or satisfaction of the decree, shall be determined by the executing court and not by a separate suit.

8. Likewise, under the provisions of Order XXI, Rule 97, 98 and 99, the same deal with the position in case of any objection filed in execution of the decree. In case of its determination, which shall be determined by the executing court, the same will be treated to be a decree within the meaning of the provision of Order XXI Rule 101, 102 and 103 meaning thereby, if any decree has been passed, the same has to be enforced since an instrument has been created unless reversed by the higher forum or superseded by an objection, treated to be the decree within the meaning of Order XXI Rule 103 C.P.C.

9. These provisions suggest that the decree has to be executed by the executing court if the force of decree subsists and there cannot be any deviation from the

decree in either ways. The executing court is required to execute the decree as per its tenor as has been held by the Hon'ble Apex Court in the case of Sneh Lata Goel vs. Pushplata and Ors. reported in (2019) 3 SCC 594 wherein it has been laid down by putting reliance on the judgment rendered by the Hon'ble Apex Court in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors. reported in (1970) 1 SCC 670 that :-

"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."

10. It is evident from the aforesaid judgment as would appear from Para-6 thereof, as referred hereinabove, that the decree has to be executed as per its tenor and cannot be deviated but subject to objection which is to be decided by the executing court in the execution proceeding.

11. So far as the fact in hand is concerned, it is the admitted position that no such objection has been filed by the judgment debtor for its consideration by the executing court either by making an application under Order XLI or under Order XXI Rule 97, 98 or 99 C.P.C.

12. The decree has been passed directing the respondents to perform the agreement by executing the sale deed. It is apparent from the decree as has been annexed as Annexure-1 that the same has been decided after framing several issues and the issues have been answered in favour of the petitioner/plaintiff and the further admitted position is that no appeal has been preferred against the said judgment.

13. The execution case has been filed but the executing court has passed an order on 06.09.2014 which is at Page 32 to the brief whereby and whereunder the reference of deposit of amount of Rs. 650/- by the decree holder, in support thereof the receipt issued by the Nazir bearing receipt No. 256 dated 06.09.2014 has been filed. The executing court has passed an order by authorizing the Nazir, Civil Court, Hazaribagh to get the sale deed executed and further the person, who has been authorized, has been directed to send the same to the Nazir, Civil Court, Hazaribagh. The execution proceeding has been stayed till the filing of the show cause.

It further appears from the order dated 02.07.2015 that the opposite parties have been debarred from filing show cause on the ground that even after their appearance on 23.08.2014 they have chosen not to file show cause.

14. The executing court thereafter passed an order on 14.07.2015 (impugned) by which the part of the order dated 06.09.2014 by which the Nazir has been directed to execute the decree, has been recalled in exercise of power conferred under Section 151 C.P.C. with a direction upon the decree holder to amend the

proposed format of sale deed and mention the caste of decree holder/vendee and judgment debtor/vendor so that the decree be executed otherwise it will not be executable.

15. So far as this direction is concerned, this Court is of the view that the executing court has deviated from the decree passed by the court of first instance whereby and whereunder the direction has been passed to perform the agreement by executing the registered sale deed failing which the same will be enforced through the process of court. Such direction, if allowed to be sustained, the same will be contrary to the settled position of law and as has been discussed hereinabove, the executing court cannot be allowed to keep the decree at hold for any unnecessary reason. As would transpire from the aforesaid direction, the executing court has recorded the reason of changing the format otherwise the decree would not be executable but what led the executing court to come to this finding is not available while passing such order. The deed of registration is to be executed under the Indian Registration Act, 1908 but no such condition is available as would appear from the said statutory provision about making reference of the caste of the vendor and the vendee.

16. Further, the direction pertaining to submission of affidavit about the position of sanction to be obtained from the Deputy Commissioner to transfer his right since the land is under the schedule area where the provision of Chhotanagpur Tenancy Act, 1908 prevails but the question herein is when no such plea has been agitated by the parties in the suit, can it be allowed to be referred by the executing court in the execution proceeding by way of objection as per the legal position and pertaining to power of the executing court and as has been held by Hon'ble Apex Court in the case of Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors. (supra), it is beyond the jurisdiction of the executing court.

17. This Court, in exercise of its power conferred under Article 227 of the Constitution of India which vests the power of supervision, is required to see the error apparent on the face of record in order to assess the legality and propriety of the order.

The Court of supervisory jurisdiction under Article 227 of the Constitution of India, if found that there is no error apparent on the face of the record, the order passed by the trial court, will not be interfered with but certainly if there is error apparent on the face of the record, the Court, having supervisory jurisdiction, is required to rectify under its correcting jurisdiction and as such exercising aforesaid power, the finding recorded by the executing court in holding the execution proceeding at hold for the reason stated in the aforesaid order, according to the considered view of this Court, is error apparent not only on fact as also on law.

18. In view thereof, the order passed by the executing court dated 14.07.2015 in Execution Case No. 18 of 2014 is set aside. The consequence to be followed.

19. Accordingly, the writ petition is allowed and disposed of.