
(2007) 02 AHC CK 0062
In the Allahabad High Court

Jagdish Kumar and Others

APPELLANT

Vs

VIIth Addl. Civil Judge and Others

RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Specific Relief Act, 1963 — Section 6

Citation : (2007) 4 ADJ 635 : (2007) 78 AWC 2464 : (2007) 3 AWC 2464

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—At the time of arguments no one appeared on behalf of the contesting respondents, hence only the arguments of the learned Counsel for the petitioner were heard.

2. Respondents 3 and 4 Guru Prasad and Ram Sanahi, filed O.S. No. 36 of 1969 against the petitioners. Suit was decreed. First appeal was dismissed. Second Appeal (Second Appeal No. 1574 of 1977) was also dismissed by this Court on 17.4.1983. Thereafter Review Application No. 86 of 1983 was also dismissed on 22.2.1984. Thereafter execution was filed being Execution Case No. 13 of 1980. Munsif Hawaii, Kanpur directed delivery of possession of the property to the decree holders-respondents 3 and 4 in execution. The possession was consequently delivered on 21/27.1.1984. Thereafter petitioners filed O.S. No. 80 of 1984 before Munsif Hawaii, Kanpur. The said suit was filed u/s 6 of the Specific Relief Act claiming therein that in execution of the earlier decree plaintiff-petitioners had been dispossessed from the land in excess of the land regarding which decree was passed in the suit (O.S. No. 36 of 1969). The suit of 1984 u/s 6 of the Specific Relief Act was dismissed by Munsif Kanpur Dehat on 23.11.1985. Against the said judgment and decree Civil Revision No. 6 of 1986 was filed by the petitioners. VIIth Additional Civil Judge, Kanpur Dehat dismissed the revision on 4.11.1986, hence this writ petition.

3. Both the courts below held that if the allegation of the petitioner that they had been dispossessed from more land than was covered by the decree was correct then their remedy was to file objections u/s 47, C.P.C. and not by a separate suit u/s 6 of the Specific Relief Act. Section 47, C.P.C. is quoted below:

47. Question to be determined by the court executing decree.--(1) All questions 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 as 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.

Explanation 1.--For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.--(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed ; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.

4. The view of the courts below is completely in consonance with the judgment of the Supreme Court in Merla Ramanna Vs. Nallaparaju and Others,

5. Accordingly there is no merit in the writ petition, hence it is dismissed.