

(2005) 08 CAL CK 0014
In the Calcutta High Court

Case No : G.A. No's. 2324 of 2000 and 2590 of 2003 and C.S. No. 3443 of 1969

Jai Krishna Arora

APPELLANT

Vs

Maulvi Abdur Rab Firoze Ahmed and Co.

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 35(1), Order 21 Rule 97

Citation : (2006) 1 CALLT 109 : (2006) 1 CHN 26

Hon'ble Judges : Soumitra Sen, J

Bench : Single Bench

Advocate : Sabyasachi Chowdhury and Tapan Sil, for the Appellant; Pratap Chatterjee and Sourav Moitra, for the Respondent

Judgement

Soumitra Sen, J.—By this order the above two applications are being disposed of. G. A. No. 2590 of 2003 has been filed on behalf of the plaintiff, inter alia, praying for the following reliefs:

- a) Sheriff of Calcutta be directed to put the plaintiff in possession of the entire 1st and 2nd floor of the said premises No. 86, Purushottam Roy Street, Calcutta by removing the defendant and any other person found therein in terms of the order dated 11th May, 1976;
- b) The Officer-in-Charge, Burrabazar Police Station be directed to depute sufficient number of police personnel at the premises No. 86, Purushottam Roy Street, Calcutta and to break open the lock of any room if any for the purpose of execution of the decree in terms of the order dated 11th May, 1976;
- c) Suitable direction be given to the Officer-in-Charge, Burrabazar Police Station to depute adequate number of police personnel at premises No. 86, Purushottam Roy Street, Calcutta to render all kinds of assistance for recovery of possession of the said premises as well as for maintaining peace in the locality for such period as to this Hon'ble Court may deem fit and proper;

d) Such further and other orders be passed to put the plaintiff in possession of the suit premises in terms of the decree dated 22nd November, 1971;

e) Such further and other order or orders be passed and/or direction or directions be given as this Hon"ble Court may deem fit and proper.

2. G. A. No. 2324 of 2000 has been filed by one Raja Ram Singh, inter alia, praying for the following relief"s :

a) Decide by trial on evidence the questions/objections to execution of the decree dated November 22, 1971 passed in Suit No. 3443 of 1969 [Joy Krishna Arora also known as Joy Kissen Arora v. Maulvi Abdur Rab Firoze Ahmed & Co.] as against your petitioner as stated inter alia at paragraph 30 of the petition and its various sub-paragraphs;

b) Direct that your petitioner cannot be dispossessed by the plaintiff and/ or those claiming under and/or through him except by due process by separate suit, if available in accordance with law, if the objections to execution aforesaid, art: sustained;

c) Direct that your petitioner be supplied copies of all pleadings, affidavits, petitions, depositions, documents and process in Suit No. 3443 of 1969 [Joy Krishna Arora also known as Joy Kissen Arora v. Maulvi Abdur Rab Firoze Ahmed & Co.] including interlocutory process and orders passed thereon and final orders/ decrees and/or all papers filed in Court of any description whatsoever, on the usual terms;

d) Pending disposal of the application, pass an interim order staying all further proceedings in execution of the decree dated November 22. 1971 passed by His Lordship the Hon"ble Justice Ramendra Mohan Datta in Suit No. 3443 of 1969 (Joy Krishna Arora also known as Joy Kissen Arora v. Maulvi Abdur Rab Firoze Ahmed & Co.);

e) Pending disposal of this application, pass an interim order restraining the plaintiff and/or his men, agents, servants, staff employees, assigns, successors-in-interest and/or any person claiming through and/or under him, from dispossession your petitioner from premises No. 86, Pandit Purushottam Roy Street, P. S. Burrabazar, Calcutta - 700 007;

f) Pass ad interim order(s) in terms of prayers (c), (d) and (e) above:

g) Pass suitable orders as to costs of and/or incidental to this application including legal expenses;

h) Pass such other and/or further order(s)/direction(s) as may deem fit and proper.

3. Prayer-(a) of the application filed by Raja Ram Singh has already been granted and evidence have also been laid by various witnesses in the said proceedings. Before dealing with the controversy in issue some of the relevant facts are

required to be stated which are as under:

The plaintiff had filed the instant suit on 3rd of October, 1969 being Suit No. 3443 of 1969, inter alia, praying for eviction of the defendant and for delivery of vacant possession of 1st and 2nd floor of premises No. 86, Purushottam Roy Street, Calcutta.

The said suit was decreed in favour of the plaintiff on 22nd November, 1971. The defendant preferred an appeal against the said decree, which was dismissed on 6th August, 1974.

The defendant preferred an appeal before the Hon"ble Supreme Court, which also stood dismissed on contest on 8th October, 1975, the plaintiff filed an application for execution on 20th November, 1975. In the said execution proceedings an order was passed on 11th of May, 1976, whereby the Sheriff was directed to deliver possession to the plaintiff in accordance with the provisions of Order 21 Rule 35(1) of the CPC by removing the defendant and/or any person who may be found therein and bound by the decree.

The Sheriff could not execute the order as there was resistance. Accordingly, a report was filed by the Sheriff on 2nd of July, 1976, wherein it was stated that police help would be necessary to break open the padlock as there was an apprehension of breach of peace.

Thereafter, sometime in 1976, a suit was filed by one Luftar Rahaman before the City Civil Court, inter alia, contending therein that the decree passed by the Calcutta High Court was not binding upon him. The said suit was transferred to the High Court and was renumbered as Extraordinary Suit No. 1 of 1977.

A significant fact is required to be noted here that the plaintiff in the instant suit has alleged that the execution proceedings in Suit No. 3443 of 1969 remained stayed in view of pendency of the suit filed by Luftar Rahaman. The said suit being Extraordinary Suit No. 1 of 1977 was principally a suit for a declaration that the decree passed in Suit No. 3443 of 1969 was not binding on the plaintiff being Luftar Rahaman and was not executable as against him. The said suit was dismissed on 25th of February, 1981.

Luftar Rahaman preferred an appeal from the said order of dismissal being A.P.D. No. 104 of 1991.

Sometime in 1994, Luftar Rahaman died. In March, 1998 the legal heirs of Luftar Rahaman filed an application for substitution after about four years.

By an order dated 10th August, 1998, two orders were passed by the Division Bench whereby the application for substitution and the appeal being A.P.D No. 104 of 1991 were dismissed.

On 10th of May, 2000 from the office the bailiff after attempting to execute the decree filed a report stating therein that Raja Ram Singh was resisting the execution of the decree. On 14th of June, 2000 an application being G. A. No.

2324 of 2000 was filed on behalf of the plaintiff/decreed-holder for police help for the recovery of possession of the property in terms of the decree of the Hon"ble Supreme Court.

In 2003, the application being G. A. No. 2590 of 2003 was filed by the plaintiff praying for the reliefs as mentioned hereinbefore.

4. The above two applications were being argued on behalf of the respective parties against the above factual backdrop.

5. On behalf of the plaintiff it was submitted that from the evidence led on behalf of the Raja Ram Singh it will be clear that he has failed to establish his independent right, title or interest in respect of the suit property. Answer to various questions of the witnesses who deposed in the trial on evidence were referred to.

6. My attention was drawn to the deposition of Sanjoy Singh and two persons by the same name of Ram Naresh Singh. Answer to question Nos. 118, 119, 120, 121, 125, 126, 127 and 129 in cross-examination of Sanjoy Singh was referred to. From the answers to the said questions it clearly appears that the said Raja Ram Singh was aware that the plaintiff was the owner of the said premises but he never during his lifetime claimed any title adverse to the owner.

7. The answer to the other question both in examination and cross-examination does not support the case of Raja Ram Singh as was sought to be made out in the pleadings. Answer to question Nos. 69-75 in cross-examination of Ram Naresh Singh was referred to. From the answer to the said questions in cross-examination it is also clear that Raja Ram Singh during his lifetime did not deny the title of the plaintiff and had never claimed any right adverse to the right of the plaintiff as an owner of the premises in question. It has been categorically stated in answer to question No. 72 that since they were residing in the premises they claimed the house to be theirs. Answer to question No. 44 of the other Raja Ram Singh was referred to. In answer to the suggestion that he has no knowledge in relation to the title of premises No. 86, Pandit Purushottam Roy Street, Calcutta, the said Raja Ram Singh answered in the affirmative.

8. On behalf of the plaintiff the Sheriffs report dated 2nd of July, 1976 was relied upon. The said report was filed by the Sheriff when attempt was made to execute the decree in terms of the order dated 11th of May, 1976 passed in the execution proceeding. From the said report it will clearly appear that the said Raja Ram Singh described himself as a Darwan of the defendant firm. From the nature of answers given in examination and cross-examination it will also appear that the said Raja Ram Singh in fact worked as a Darwan. The property was never mutated in his name. He never paid Municipal Tax and there was no electricity connection in his name. He merely continued to reside in the said premises without claiming any title adverse to the real owner.

9. On behalf of Raja Ram Singh and/or his legal heirs it was submitted that the

original execution application stood disposed of by an order dated 11th of May, 1976 when the order as prayed for in the tabular statement was duly passed. It was submitted that therefore nothing remained in the execution application. It was further submitted that the second time when the bailiff went to execute the decree, the decree which was sought to be executed, was a decree that was passed in the suit of Luftar Rahaman and since it was merely a declaratory decree it could not be executed.

10. On behalf of the plaintiff it was submitted that since Sheriff in terms of the order dated 11th of May, 1976 could not deliver possession and the order was not complied with the question of the execution application being disposed of could not and did not arise. It was further submitted that when the bailiff went for the second time after the appeal of Luftar Rahaman was dismissed, by mistake in the report of the bailiff dated 10th May, 2000 the cause title of the suit of Luftar Rahaman was mentioned. The mistake, according to the plaintiff, was bona fide in view of the fact that the original decree in the suit of the plaintiff became executable only after the dismissal of appeal filed by Luftar Kahaman.

11. On behalf of the Raja Ram Singh and/or his legal heirs it was further submitted that as the execution proceeding was disposed of, there could be no application for execution today as it is time-barred. It was submitted that there was no pending proceeding in which any application can be filed for obtaining police help. The question, which is therefore required to be examined, is whether the original execution proceeding was kept alive or not.

12. From the order of the Division Bench passed on 10th of August, 1998 it will clearly appear that the execution proceeding had remained stayed due to the pendency of the suit of Luftar Rahaman. Since the execution proceeding was stayed, in spite of resistance of Raja Ram Singh when the bailiff went to execute the decree in the year 1976, no further steps could be taken for obtaining police help and the said decree became executable only after the order of 10th of August, 1998, whereby the appeal and the application for substitution filed in the suit of Luftar Rahaman were dismissed and all interim orders were vacated.

13. The decree now is a decree of the Hon''ble Supreme Court as the appeal was dismissed by the Hon''ble Supreme Court on contest by delivering a judgment and it was not a merely dismissal of special leave petition. There is no doubt in my mind that after looking into the records of this case that the execution proceedings was indeed stayed due to the pendency of the suit of Luftar Rahaman. The confusion has been created by reason of the wrong cause title contained in the bailiff's report of 10th May, 2000. The applicants in G. A. No. 2324 of 2000 are trying to take advantage of the said mistake.

14. On behalf of Raja Ram Singh and/or his legal heirs it was submitted that they are not bound by the decree, as they are not claiming any right, title or interest under the defendant. But, however, in order to resist the decree for eviction a

person is required to establish his independent right. In my opinion, the said Raja Ram Singh and/or his legal heirs have failed to prove such independent right. Moreover, the Sheriff's report dated 2nd July, 1976 clearly records that the Raja Ram Singh was a Darwan of the defendant. The evidence also to an extent suggests the same. Therefore, in my opinion, Raja Ram Singh resided in the suit premises merely by way of permissive occupation under defendant. Once the right of the defendant to remain in possession is extinguished by the decree for eviction becoming final. Raja Ram Singh's right to remain is also bound to come to an end. It is a settled position of law that long occupation of premises does not create any right by way of adverse possession. A right adverse to the original owner has to be claimed and/or asserted. From the nature of evidence led in the proceeding it is clear that the said Raja Ram Singh and/or his legal heirs have never asserted any right adverse to the right of the plaintiff.

15. On behalf of the plaintiff the decisions of 1) Venkatachalaiah and Anr. v. Nanjundaiah and Ors., reported in AIR 1992 Karnataka 270, 2) Wg. Cdr. (Retd.) R.N. Dawar Vs. Shri Ganga Saran Dhama, , 3) Jahurul Islam Vs. Abul Kalam and others, , 4) Premendu Bhusan Mondal Vs. Sripati Ranjan Chakravarty, --were relied upon for the proposition that a person in unauthorized possession admitting title of true owner cannot claim adverse possession. From the said decision the position of law which clearly emerges is that long possession of property is not necessarily an adverse possession and a person who claims a right to a property by way of adverse possession must definitely allege and prove as to how and when the adverse possession commenced and what was the nature of possession and whether the fact of his adverse possession was known to the real owner. The mere fact that he was in uninterrupted possession for several years and in that way he acquired a right and title is not enough to raise a plea of adverse possession.

16. In the instant case, from the evidence it is clear that Raja Ram Singh and/or his legal heirs have failed to prove any of the conditions, which is required to be proved by asserting a right of adverse possession. In the decision at Jahurul Islam (supra) the Division Bench has observed that mere possession even of a trespasser will not constitute adverse possession unless accompanied by open assertion of right hostile as against the real owner. It is significant to note that Raja Ram Singh in his application being G.A. No. 2324 of 2000 had stated that he merely walked into the said premises in about April, 1953 to take shelter and thereafter continued to reside in the said premises and no one objected to his staying in the said premises. Such assertion is difficult to believe. It is quite improbable that a premises in the heart of Calcutta would be left upon for any one to walk in and remain there without being questioned. But significantly the assertion is such which clearly implies that the said Raja Ram Singh had never claimed any right, title hostile to the real owner. It also appears from the averments contained in the said petition that there were other occupants of the said premises including one Luftar Rahaman, but the keys to the gate were with the said Raja Ram Singh. This also clearly indicates that he was acting as a

Darwan.

17. Though in the petition Raja Ram Singh has alleged to have issued rent receipt to the other occupants but in the proceeding no such rent receipts were produced nor relied upon on behalf of Raja Ram Singh and/or his legal heirs.

18. It was submitted with great deal of emphasis on behalf of Raja Ram Singh and/or his legal heirs that the decree, which was sought to be executed in the year 2000, was the decree of Luftar Rahaman which being a declaratory decree could not be executed. In my opinion, the said emphasis is misplaced. The decree of Luftar Rahaman being a declaratory decree obviously cannot be executed. What is required to be executed is the decree passed in the instant suit. As in my opinion the execution proceeding had remained undisputedly stayed until the entire proceeding in the suit of Luftar Rahaman came to an end, the said decree became executable only thereafter.

19. The plaintiff in the suit in spite of obtaining a decree which was subsequently confirmed by the Supreme Court have not yet been able to get possession of the suit property by reason of the various proceedings that have been initiated from time to time. Since Raja Ram Singh was claiming an independent title to the suit property the said application being G. A. No. 2324 of 2000 was filed for establishing his independent title by a trial on evidence and his prayer for trial was granted. But in my opinion, he has not been able to establish his independent title in any manner whatsoever.

20. On behalf of Raja Ram Singh and/or his legal heirs the decision of Dilip Nag v. Lilabati Garai, reported in AIR 1992 Cal 219, was relied upon in support of the proposition that all questions relating to title can be gone into in an application under Order 21 Rules 97 and 101 and an order passed in such a proceeding would have the force and effect of a decree. It was submitted that the entire procedure of the suit need not be followed while disposing of an application filed under the said provisions of the Civil Procedure Code. The position is well-settled and the evidence of the parties in this proceeding has been taken only for that purpose. No allegation has been raised that the parties to this proceeding were not rendered adequate assistance of representing the case and have been prevented from producing relevant evidence.

21. A point of limitation was raised on behalf of Raja Ram Singh and/or his legal heirs it was submitted that after expiry of three years from the date of resistance no further steps can be taken for recovery of possession. In my opinion, the said contention is not well-founded. The executability of the decree has not become time-barred as it had remained stayed until at least 10th of August, 1998 when all interim orders were vacated. Each act of resistance constitutes a separate cause of action. It is well-settled that a plaintiff/decreed-holder can file for successive execution application within the period of limitation until the decree is satisfied. Therefore, in my opinion, the plaintiff/decreed-holder is entitled to order as prayed for and accordingly, the application being G. A. No. 2590 of 2003 is

allowed. I direct the Sheriff of Calcutta to put the plaintiff in possession of the entire 1st and 2nd floor of the said premises No. 86, Purushottam Roy Street, Calcutta by removing the defendant and/or any other person found therein in terms of order dated 11th of May, 1976 and if necessary the Sheriff shall obtain police help for the purpose of breaking open of padlock of any room for the purpose of execution of the decree and to implement the orders passed herein. The Officer-in-Charge of Burrahazar Police Station is directed to render adequate assistance to the Sheriff if called upon to render such assistance for the purpose of implementation of the orders passed by this Court.

22. In view of my findings as above, the application filed by Raja Ram Singh and/or his legal heirs being G. A. No. 2324 of 2000 is hereby dismissed with costs assessed at Rs. 10,000/= (Rupees Ten Thousand).

Later :

23. Stay prayed for is refused. All parties concerned are to act on a signed copy of the operative portion of this judgment on the usual undertaking.