
(2006) 04 JH CK 0008

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 6837 of 2004 and 4498 of 2005

Jalil @ Jalil Ahmad @ Md. Jalil Ahmad

APPELLANT

Vs

Syed Maniruddin

RESPONDENT

Date of Decision : 12-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 99, 151, 57
Constitution of India, 1950 — Article 227

Citation : (2006) 3 JCR 470

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Prasad and V.K. Prasad, for the Appellant; Manjul Prasad and Manoj Kumar, for the Respondent

Judgement

M.Y. Eqbal, J.—In these two writ petition, since common questions of law and facts are involved they have been heard together and are disposed of by this common order.

2. In W.P.(C) No. 6837 of 2004, the petitioner under Article 227 of the Constitution of India has prayed for quashing the order dated 10.12.2004 passed by the Munsif, Lohardaga in Execution Case No. 04 of 2003 whereby he rejected the petitioner's objection purported to have been filed under Order XXI, Rules 97 and 99 read with Sections 57 and 151 of the CPC challenging the executability of the eviction decree.

3. In W.P.(C) No. 4498/2005, the same petitioner has prayed for quashing the order dated 13.10.2004 passed by the Additional District Judge, Lohardaga in Title Appeal No. 34 of 2003, whereby he has stayed the further proceeding of Execution Case No. 01 of 2004.

4. The brief facts of the case, which are relevant, lie in a narrow compass:

The petitioner filed Title Suit No. 16 of 1992 in the Court of Sub. Judge, Lohardaga seeking a decree for specific performance of a registered agreement

dated 25.6.1983 rectified and confirmed by another registered agreement dated 15.6.1988 in respect of the suit properties comprising of a building situated at Village Nadia bearing M.S. Plot No. 377 and 378 within Lohardaga Municipality in the district of Lohardaga. The defendant-respondent contested the suit on the ground, inter alia, that he had agreed to mortgage his property, but the plaintiff-petitioner fraudulently got executed a registered agreement of sale. The learned Sub Judge in terms of judgment dated 10.9.2003 decreed the suit and directed the defendant-respondent to execute the sale deed within 60 days. The respondent filed Title Appeal No. 34 of 2003 challenging the judgment and decree passed in title Suit No. 16 of 1992. In the meantime, the petitioner executed the aforesaid decree in Execution Case No. 34 of 2003 and prayed for execution and registration of the sale deed in terms of the decree for specific performance. On the other hand, the respondent filed a suit for eviction in the year 1999 being Eviction Suit No. 01 of 1999 in the Court of Munsif, Lohardaga. The eviction suit was decreed on 1.8.2003. The present petitioner, who was the tenant, filed Title Appeal No. 30 of 2003. The said appeal was heard and finally dismissed on 16.11.2004. The petitioner thereafter filed Second Appeal No. 44 of 2005 which is pending. The respondent also levied Execution Case No. 01 of 2004 for executing the decree for eviction.

5. In Execution Case No. 01 of 2004 which was filed by the respondent for taking delivery of possession in execution of decree, the petitioner filed objection which was rejected in terms of the order dated 10.12.2004 which is subject matter of W.P.(C) No. 6837 of 2004.

6. I have heard Mr. P.K. Prasad, learned Counsel appearing for the petitioner and, Mr. Manjul Prasad, learned Counsel for the respondent.

7. On the one hand, the Court of Sub Judge in a suit for specific performance of contract after deciding the issue that the registered agreement for sale entered into between the parties was legal and valid, decreed the suit for specific performance of contract in favour of the petitioner. On the other hand, the Court of Munsif, Lohardaga in a suit for eviction filed by the respondent against the petitioner after deciding the issue of relationship of landlord and tenant, decreed the suit for eviction. Against the said decree, the petitioner filed Title Appeal No. 30 of 2003 which was also dismissed and the second appeal at the instance of petitioner being S.A. No. 44 of 2005 is pending in this Court.

8. In the aforesaid premises, the question that falls for consideration is whether the petitioner is liable to be evicted in execution of decree for eviction passed against him when a decree for specific performance passed in favour of the petitioner by the Court of Sub Judge, Lohardaga. 9.

9. Before answering these questions, I would like to refer some of the decisions rendered by the Supreme Court in similar matters. In case of Arjunlal Bhatt Mall Gothani and Others Vs. Girish Chandra Dutta and Another, the fact of the case was that the appellants were tenant in the premises of the respondents-landlord

and three suits for eviction were pending against them. By an agreement between the appellants and the respondent, the respondent agreed to sell the whole property to the appellants for a certain sum to be paid to him in equal instalments. Clause 5 of the agreements provided that in case of default of any instalment, the agreement for sale would stand cancelled and if the purchasers failed to pay the defaulted instalments within one month's notice and payments made would stand forfeited and purchasers would make over possession of the property to the vendor. As a result of this agreement all the three previous proceedings pending against the appellants were withdrawn by the respondent. But the appellants having failed to pay even the first instalment, the respondent filed a suit for possession of property. The appellants, apart from other contentions, also argued that the suit had been filed without notice. On the aforesaid fact, when the matter went to Supreme Court, Their Lordships held that when the agreement for sale entered into, the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement. In paragraph 5 of the judgment, Their Lordships held:

We are satisfied that both the Courts below have arrived at the correct conclusion that there is no evidence at all to justify an inference that the agreement in question was obtained from the appellants under undue influence or coercion. None of the instalments were paid as agreed upon, the application made by the appellants on March 31, 1960, as well as the application made subsequently are patently dishonest attempts at avoiding payment of the instalments as agreed upon. Under Clause (5) of the agreement the question of giving notice arises only if the vendor wanted to forfeit the instalments paid by the purchaser. Not even one instalment having been paid the question of forfeiture does not arise and no notice was necessary for canceling agreement. It stood automatically cancelled. It was sought to be argued before us that once the agreement stood cancelled the appellants stood restored to their original position as tenants and the suit could not be filed without giving notice under the Transfer of Property Act. We are of opinion that when the agreement dated June 7, 1959, was entered into the old relationship of landlord and tenant came to an end. The rights and liabilities of the parties have to be worked out on the basis of that agreement. This is obvious from the fact that there was no provision for payment of any rent till the whole purchase money was paid or even for the balance of the purchase money that may be due after one or more instalments were paid. There was no provision even for payment of interest in respect of the whole of the purchase money or any of the instalments. Therefore, when the agreement stood cancelled the plaintiff was automatically entitled to possession under the terms of the agreement.

10. In case of *P. Kanthimathi and Ors. v. Mrs. Beatrice Xavier* 2001 (2) JLJR 372, a similar question came for consideration before the Supreme Court. The question was : "Whether on the execution of the agreement to sell, by the landlord with the tenant and landlord having received substantial portion of the

sale consideration, the relationship of landlord-tenant inter se between them ceases and fresh rights and obligations flow under that agreement?" Their Lordships held that after the execution of agreement of sale between the landlord and tenant, the old relationship as such comes to an end. Subsequent sending back of sale consideration by landlord to tenant does not revive their old relationship. The Supreme Court following the ratio decided in *Arjune Lal Bhatt*'s case (*supra*) held as under:

6. Any jural relationship between two persons could be created through agreement and similarly could be changed through agreement subject to the limitations under the law. Earlier when appellants were inducted into tenancy it only means both agreed that their relations is to be that of a landlord and tenant. Later when landlord decides to sell this property to the tenant and tenant agreed by entering into agreement they by their positive act changed their relationship as purchaser and seller. When seller-landlord accepts sum he actually acts under this agreement. This acceptance preceded by agreement of sale changes their relationship. This is how they intended. Once accepting such a change then their relationship of landlord-tenant ceases.

11. The instant case, in my opinion, is on a better footing as on the basis of registered agreements dated 25.6.1983 and 15.6.1988, the respondent-landlord alleged to have agreed to sell the suit property in four of the petitioner-tenant. On the basis of said registered agreements, a suit for specific performance was filed by the petitioner and the same was decreed on 10.12.2004. Against the said decree, the respondent preferred appeal being Title Appeal No. 34 of 2003 which is pending. After the suit for specific performance was filed, the respondent much later filed eviction suit in the year 1999 for eviction of the petitioner and the said suit was decreed and now the matter is pending in this Court in Second Appeal No. 44 of 2005.

12. It is well settled that an agreement to sell does not create any interest in the immovable property. It is a right in personam which right can be enforced by obtaining a decree for specific performance. But in my opinion, if a decree for specific performance is obtained on the basis of agreement to sell so long as the decree subsists in favour of a person who is in possession, he cannot be evicted in execution of a decree for eviction.

13. As noticed above, in the instant case, the petitioner obtained the decree for specific performance and the matter is pending in appeal at the instance of the respondents. On the other hand, the respondents obtained the decree for eviction which is also pending in appeal at the instance of the petitioner. In such circumstances, it would be just, fair and equitable that so long as the decree for specific performance is not finally set aside or affirmed by the higher Courts, both the petitioner and the respondent shall not be entitled to execute the decree either for seeking delivery of possession or for seeking a direction for execution and registration of sale deed.

14. With the observations and directions made above, these two writ petitions are disposed of.