
(1995) 06 GUJ CK 0021
In the Gujarat High Court

Kesarben Dhulaji Prajapati

APPELLANT

Vs

Amarsingh Baldevsingh Chauhan and Others

RESPONDENT

Date of Decision : 30-06-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 97, 115

Citation : (1996) 1 GLR 71

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Judgement

Y.B. Bhatt, J.—The present revision has been filed by the petitioner who is the original obstructionist in execution proceedings and the appellant in the lower appellate Court. The first respondent herein, viz.. Amarsingh Baldevsingh Chauhan, was a decree-holder who died during the pendency of the appeal before the lower Court and came to be represented by Laxmansingh Baldevsingh Chauhan. Respondent Nos. 2, 3 and 4 herein were parties to the original suit, but their status so far as the present revision is concerned, is not significant.

2. The relevant and pertinent facts leading to the present revision are not only necessary to be examined, in order to focus the attention thereon in the correct perspective, but also present an outstanding case where lengthy, protracted and deliberately extended litigation tends to defeat justice, and results in frustration to those who are law-abiding citizens and seek to redress their grievances through due process of law instead of resorting to extra-judicial methods.

3. Amarsingh Baldevsingh Chauhan-original plaintiff was a landlord of the leased premises in question, and he filed H.R.P. Suit No. 5202 of 1968 for eviction of his tenant and sub-tenants, and for possession of the leased premises under the relevant provisions of the Bombay Rent Act. It is significant and important to note that this was the commencement of the litigation, in the year 1968, viz., almost 28 years ago. This suit was filed against Shivnarayan Dhulaji Prajapati, who was alleged to be the sole tenant of the plaintiff-landlord. It is also pertinent and significant to note that the present petitioner Kesarben Dhulaji is the mother

of the aforesaid Shivnarayan Dhulaji Prajapati, and to also note that the present respondent Nos. 2 to 4 are the sons of the present petitioner and also the sons of the tenant Shivnarayan Dhulaji.

4. The suit of eviction was filed on the grounds of arrears of rent, unlawful sub-letting and reasonable and bona fide requirement. The said suit was dismissed by the trial Court on all the grounds. The landlord then challenged the dismissal of the suit by filing Civil Appeal No. 269 of 1972 which also came to be dismissed by the Bench of the Small Causes Court, Ahmedabad. The landlord was then obliged to prefer Civil Revision Application No. 1138 of 1976 in this Court u/s 115 read with Section 29(2) of the Bombay Rent Act. In the said revision this Court came to the conclusion that other grounds for eviction could not be made out and to that extent the judgment of the lower appellate Court was confirmed, except on the ground of reasonable and bona fide requirement of the landlord. On this last ground this Court allowed the revision of the landlord and passed a decree for eviction.

5. It should be noted here that the original landlord had expired during the pendency of the appeal from which the aforesaid revision arose, and therefore he came to be represented by Laxmansingh Baldevsingh Chauhan, who stepped into the shoes of the original plaintiff. However, since Laxmansingh Baldevsingh Chauhan was on record as a legal representative of the original plaintiff, he became the decree-holder so far as the decree for eviction passed by the High Court is concerned. No doubt, when the High Court reversed the judgments of the lower appellate Court and of the trial Court, so far as the ground of reasonable and bona fide requirements of the landlord is concerned, and passed a decree on that ground, the said decree would relate back to the filing of the suit, and thus it can also be said that the decree was for the benefit of the original landlord as also for the benefit of his heir and legal representative.

6. However, the decree-holder then faced the next hurdle of executing the decree in order to obtain possession of the leased premises. He, therefore, filed execution proceedings, viz., Darkhast No. 73 of 1979. This Darkhast proceeded at its own pace until, after many years, a stage came where the decree-holder was hopeful of enjoying the fruit of his decree. This happened when the executing Court directed a possession warrant to be issued in his favour in respect of the premises in question.

7. At this stage, the present petitioner offered resistance and obstructed the execution and implementation of the warrant for possession. It must be noted here that the present petitioner is the mother of the original tenant Shivnarayan Dhulaji Prajapati, and also the mother of the present respondent Nos. 2 to 4. Since the decree-holder was obstructed, he was obliged to file an application in the Darkhast Court under Order 21, Rule 97 CPC for the removal of the said obstruction. This application was originally filed in 1980 and numbered as Misc. Civil Application No. 268 of 1980. The said application came to be renumbered in 1983 as Civil Misc. Application No. 146 of 1983, mainly due to the various

technical objections raised by the judgment-debtors, which the executing Court had to deal with and decide. After hearing the parties the executing Court allowed this application of the decree-holder and directed the obstruction filed by the present petitioner be removed and further directed the implementation and execution of the warrant for possession.

8. The present petitioner, therefore, preferred an appeal from the said order of the executing Court, which came to be numbered as Civil Misc. Appeal No. 356 of 1984. The said appeal was heard and decided by the appellate bench of the Small Causes Court, Ahmedabad who was pleased to dismiss the same.

9. At this stage it would be relevant to note the various contentions taken by the obstructionist before the courts below and also to note the factual findings on the basis of which such objections have been over-ruled and the decree-holder's application for removing the obstruction has been allowed.

10. Both the executing Court as also the lower appellate Court have recorded a concurrent finding of fact that the obstructionist had no right, title or interest in the property, and therefore, no reason for offering obstruction. Her specific case of co-tenancy in the leased premises has been specifically considered in detail and this contention has been specifically rejected. Both the Courts have noted the important and significant fact that the obstructionist is the mother of the original tenant as also the mother of the present respondent Nos. 2 to 4, that as the mother of the original tenant Shivnarayan Dhulaji, she must have been aware of the ongoing litigation which ultimately resulted in the decree of eviction. However, at no stage of the litigation, starting from the suit and ending with the revision in the High Court in which decree for eviction came to be passed, did the obstructionist ever raise any objection or contention to the effect that she is a necessary party to the proceedings inasmuch as she is co-tenant of the premises in question. Both the Courts have, therefore, found that this fact also indicates that she could not have been a co-tenant. The fact that she did not take any steps to assert her so-called co-tenancy at any point of time until she was faced with the decree-holder's application for removing the obstruction under Order 21, Rule 97, also goes to support the contention of the decree-holder that the objections raised by her are not only mala fide, but have been raised only with a view to defeat and/or delay the execution proceedings and with a view to frustrate the decree-holder in enjoying the fruits of the decree. Both the Courts below have also considered and rejected her case of co-tenancy on her alternative plea that she was assisting her sons in their business on the suit premises, and for this reason also she could not be a co-tenant. This contention has also been rejected on the basis of the factual material on record. It was found that the original tenant was in the business of selling vegetables in the suit premises and the mere fact that he was assisted in the business by his mother and/or brothers, would not confer any co-tenancy on such persons. The case of co-tenancy put up by the obstructionist was also rejected on the ground that the son of the obstructionist, i.e., the original tenant Shivnarayan Dhulaji

was admittedly the sole tenant of the leased premises. It appears that this observation is made on some admission made in the original suit. On the basis of the aforesaid findings, the lower appellate Court ultimately concluded that the obstructionist Kesarben had no right, title or interest in the suit shop, and consequently she was not entitled to resist the decree for possession and was, therefore, not entitled to raise any obstruction, which was directed to be removed.

11. The present revision filed by the obstructionist Kesarben seeks to challenge the order of the lower appellate Court, confirming the order of the executing Court, directing the removal of her obstruction and granting the application of the decree-holder made under Order 21, Rule 97 CPC.

12. Learned Counsel for the petitioner attempted to raise certain grounds which I will not discuss in detail herein for the simple reason that they involve questions of fact on which both the Courts below have rendered concurrent findings against the petitioner. The same are, therefore, beyond the scope of the present revision u/s 115 CPC. In any case, such findings cannot be re-agitated here inasmuch as I am not hearing an appeal from the impugned decisions.

13. Learned Counsel for the petitioner then sought to raise a contention herein which is admittedly a contention raised for the first time in the lengthy course of litigation. This contention was not raised in either of the Courts below, i.e., in the Darkhast nor in any of the proceedings prior thereto. The contention sought to be raised by the Learned Counsel for the petitioner is to the effect that the decree for eviction passed by the High Court in the revision relates back to the suit and in law the said decree is based on the cause of action made out by the original landlord, the plaintiff. According to him, the decree is based on the ground of reasonable and bona fide requirement of the landlord. Since the landlord had expired during the pendency of the appeal (appeal against the dismissal of the suit), it can no longer be said today that the requirement of the landlord still survives. In other words, he contends that the reasonable and bona fide requirement of the landlord is a personal cause of action and it is on this cause of action that the decree for eviction came to be passed. Once it is found that the landlord has expired, the benefit of such decree cannot be transferred to the legal representatives of the original plaintiff. Ultimately, he summarised these contentions by submitting that such a decree has become incapable of execution.

14. Before I proceed to examine these contentions on merits, I may note and deal with simultaneously the contentions raised by Learned Counsel for the respondent No. 1 decree-holder - Darkhastdar. He firstly contends that in the present revision u/s 115 CPC the powers of this Court are extremely limited and are circumscribed by the provisions of Section 115 CPC, and in particular by the proviso to Sub-section (1) thereof. Accordingly, the only ground on which this Court would be justified interfering in the concurrent orders of the Courts below would be where the fact situation contemplated by Clause (b) to the said proviso is made out by the petitioner. In other words, Learned Counsel for the first

respondent-decree-holder contends that unless the petitioner shows that the impugned orders shall occasion "a failure of justice or cause irreparable injury", this Court would not be justified in interfering with the impugned orders. This contention raised by Learned Counsel for the first respondent is eminently justified and must be accepted. It is an admitted position that the concurrent findings of fact by the two Courts below are against the present petitioner. It is also an admitted position that the factual findings cannot be re-agitated in the revision. Thus, unless the petitioner establishes that substantial justice can only be done by setting aside the impugned orders, they must be allowed to stand.

15. One of the reasons why I have narrated the history of the litigation hereinabove is to emphasise the difficulties in the way of the plaintiff in firstly obtaining decree, and at the subsequent stage, in obtaining the fruits of the decree. The tenant, his brothers and now the mother of the tenant have succeeded so far in driving the landlord through a long, tedious and frustrating litigation inspite of the fact that the landlord has been found to be entitled to possession of the leased premises. The original plaintiff-landlord has been engaged in, and kept immersed in such litigation at the instance of his tenant and family members for about 28 years. The suit had been filed as early as the year 1968 and it is obvious that the real cause of action, viz., the reasonable and bona fide requirement of the landlord must have existed even prior to the filing of the suit. Even when the landlord obtained a decree in his favour, he was made to go through this protracted series of litigations. The present revision at the instance of the mother of the original tenant does not permit the decree-holder to enjoy the fruits of the decree. It is in the context of these facts, that the Learned Counsel for the first respondent submits that substantial justice requires only that the revision be dismissed, rather than entertaining it on any technical questions admittedly raised for the first time in the present revision. On a total consideration of the facts and circumstances of the case, including the factual observations made by the two Courts below on the conduct of the present petitioner and her family members as to how they have done their best to frustrate the decree holder in obtaining the fruits of the decree, I am inclined to uphold this contention of the first respondent.

16. Another contention raised by Learned Counsel for the respondent No. 1 is that the contention now sought to be raised by the present petitioner is not a question of jurisdiction, which may perhaps be permitted to be raised for the first time in such a revision. The contention that the decree has become incapable of execution is not a pure question of jurisdiction. It is a question of fact which should have been pleaded and dealt with in the Courts below. The contention sought to be raised by the petitioner herein that the decree has become incapable of execution, in the facts and circumstances of the present case, would amount to an attempt to go behind the decree.

17. Furthermore, the contention sought to be raised by the petitioner is not a pure question of law as it is sought to be contended. It is not even strictly

speaking a "jurisdictional issue" nor "jurisdictional fact". At the highest, it may be said on behalf of the petitioner, that it is a mixed question of law and fact. Be that as it may, I need not examine this question in greater depth, particularly since it is a mixed question of law and fact, inasmuch as the same would require further and additional evidence for an effective conclusion. In order to deal with the same effectively, other evidence would be necessary, and perhaps the question of remand may also arise, if we go deeper into the matter with a view to examine whether the landlord requires the premises for his own use as an individual, or for himself and his family members, or for himself and others in partnership, etc. Moreover, a deeper examination of this issue may also require other and allied evidence on fresh questions which would necessarily arise, once the factual inquiry is initiated. This would then become a very lengthy and protracted factual inquiry, which would not, in my opinion, accord justice to the decree-holder.

18. Another contention raised by the Learned Counsel for the 1st respondent is to the effect that the question of whether the decree has become incapable of execution or not, on the facts of the given case, is a question that may at best be raised by either parties to the suit or by the judgment-debtor, but can certainly not be permitted to be raised by persons such as the present petitioner who is a stranger to the litigation. The petitioner has entered the litigation forcibly by offering obstruction to the execution of the warrant for possession. She is, therefore, not merely an obstructionist and a stranger, but also an inter-meddler. In fact when both the Courts have observed that she has absolutely no right, title or interest in the suit property, and when both the Courts below have adversely commented upon the mala fides of her behaviour, conduct and contentions raised, they have in fact branded the petitioner as an inter-meddler. Such a person cannot be permitted, in law or in fact, to raise the question of executability of the decree. Even this submission of the Learned Counsel for the first respondent, I find, to be reasonable and sustainable.

19. Another submission which Learned Counsel for the first respondent is that the decree in question is one of eviction under the provisions of the Bombay Rent Act and the only parties who have any legal status to question any such decree under the Rent Act would be a person who is connected with the relationship of landlord and tenant, or at best a person who claims through such a person. The present petitioner admittedly does not hold any such status. Such a stranger cannot then be permitted to question a decree under the Rent Act. This contention, however, may be examined in a different perspective. Obviously, the impugned orders have been passed since the petitioner has been found to have no status in law to resist the possession warrant. Under the circumstances, the petitioner is found not to have any locus to question the possession warrant. Whether such a petitioner can, even indirectly, question the executability of the decree is a question which must be answered in the negative.

20. This question may also be considered as "what is the right of the

obstructionist, as an opponent in an application under Order 21 Rule 97 CPC?" To my mind the extent of the right is commensurate with the status of the obstructionist, viz., as an opponent in the application of the decree-holder under Order 21, Rule 97. His only right is a right to protect his possession by showing a legitimate, legal and better right to possession than the decree-holder. Secondly, the only objection such an opponent can raise or which would be permissible would be such as would enable him to protect his possession, and such objection must have a direct nexus with the possession sought to be protected. Such a right would not extend to challenging the decree under execution, on any ground whatsoever, at least in proceedings under Order 21, Rule 97. In other words, the obstructionist is confined to his locus and status of the opponent in the application under Order 21, Rule 97, and to take a view that he could raise any and all objections (including an objection which goes beyond the decree or an objection which hits the decree on merits), would extend the locus and status of the obstructionist to that of a judgment-debtor. Clearly, in my view, this is not permissible, inasmuch as the entire scheme of Order 21, when seen as a whole, and the scheme of Rules 97 to 101, when read collectively, clearly demarcate and keep apart the locus and status of the obstructionist as against the judgment debtor. To permit such contentions to be raised would merge the interest of the obstructionist with that of the judgment-debtor. In my view, this is not permitted by the general scheme of the aforesaid provisions.

21. Learned Counsel for the petitioner then sought to place reliance upon a decision of this Court reported at 20 GLR 664, and in particular the observations made in paragraph 5 of the said decision. However, this decision cannot be of any assistance to him inasmuch as the same does not lay down any broad proposition of law which may assist the petitioner in her case. The proposition laid down in the said decision to the effect that the decree in question in that case had become incapable of execution, was based on the particular facts of that case. In particular, the Court found that the decree became incapable of execution because the property in respect of which the decree pertained had ceased to exist. It was on this factual basis that the Court found that the decree had become incapable of execution. This decision has no relevance to the facts of the present case.

22. To summarise, I am of the view that it would not be permissible in law nor would it be conducive to the interests of justice to hold, on the facts of the case, that the decree in question has become incapable of execution. Even otherwise, in view of a specific provision of Clause (b) to the proviso of Section 115(1), I am of the opinion that there would certainly be a failure of justice and result in irreparable injury to the decree-holder, if this Court were to interfere with the impugned orders. I, therefore, decline to interfere.

This revision, is therefore, required to be rejected and is accordingly rejected. Rule is discharged with costs quantified at Rs. 1,000/- Ad interim relief vacated.

23. At this stage, Learned Counsel for the petitioner requests for extension of the

ad interim relief granted in the present revision in order to approach the Supreme Court. Accordingly ad interim relief is extended upto 16th August 1995, with the specific understanding that no further extension shall be sought nor granted. This order is conditional upon the petitioner depositing in the execution proceedings a sum of Rs. 5,000/- by way of compensation (for the use and occupation of the property) on or before 26th July 1995. The first respondent herein shall be at liberty to withdraw the said amount without prejudice to his rights and contentions.