
(2002) 04 BOM CK 0075

In the Bombay High Court

Case No : Civ. Rev. Application No. 103 of 1995

Lalitkumar Ramlal Sharma and Others

APPELLANT

Vs

Jadavbai Murlidhar Sharma and Others

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 47, 47(1)

Citation : (2002) 4 ALLMR 501 : (2002) 4 BomCR 548 : (2002) 3 BOMLR 679 :
(2002) 4 MhLj 649 : (2002) 2 MhLj 649

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : S.P. Palshikar, for the Appellant; V.G. Moharil, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Heard Shri Palshikar, learned counsel for the applicants, and Shri Moharil, learned counsel for the respondents.

2. The Civil revision application is directed against the order dated 9-12-1994 passed by the Civil Judge, Junior Division, Gondia in Regular Civil Suit No. 42/1989 filed by the respondents, whereby application moved by the present applicants under Order VII, Rule 11(d) of the CPC came to be rejected.

3. Shri Palshikar, learned counsel for the applicants, states that the present applicants are the legal representatives of deceased Gulabbai. Deceased Gulabbai filed Special Civil Suit No. 12/1971 for partition and separate possession of the house property bearing Plot No. 18/5, Sheet No. 28, Goshala Ward, Gondia against Ramprasad, Tarabai and Shankarlal. It is contended that the said suit was decreed on 21-2-1979 and Gulabbai was held to be entitled to 1/3rd share in the suit property. The teamed Counsel further states that being aggrieved by the judgment and decree passed by the trial Court, Gulabbai preferred First Appeal No. 70/1980 in this Court and same was partly allowed on 1-12-1989. It was held by this Court that Gulabbai was entitled to 1/2 share in

the suit property and the judgment and decree dated 21-2-1979 passed by the trial Court was modified accordingly.

4. It is contended by learned Counsel Shri Palshikar that during the pendency of Special Civil Suit No. 12/1971, i.e. on 25-12-1978, the present respondents purchased the suit property, i.e. house referred to hereinabove from one Brijmohan and Hiralal, who were brought on record as legal representatives of original defendant No. 1 Ramprasad. It is further contended that the present respondent Nos. 1 and 2 filed Regular Civil Suit No. 42/1989 for declaration that the judgment and decree passed in Regular Civil Suit No. 12/1971 is null and void and not binding on them. It is submitted that the present applicants are the defendants in the said suit and they filed an application in the said suit under Order VII, Rule 11 of the CPC and prayed for rejection of plaint since separate suit is not maintainable. The said application is rejected by the trial Court by the impugned order dated 9-12-1994. Hence, the applicants have filed the present revision.

5. Learned Counsel Shri Palshikar assails the impugned order passed by the trial Court on the ground that in view of provisions of Section 47 of the Code of Civil Procedure, the respondents are entitled to raise objection, if any, in the execution proceedings of the judgment and decree in Special Civil Suit No. 12/1971 and executing Court has jurisdiction to adjudicate upon the same and decide the issue. It is contended that Sub-section (1) of Section 47 of the CPC contemplates that 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. It is contended by the learned counsel that since respondents have purchased the suit property from one of the original defendants during the pendency of the earlier suit, they fall within the category of the representatives of the defendants and, therefore, the only remedy available to them is to raise an objection in execution proceedings and the executing Court needs to adjudicate upon the same and give decision. They are not entitled to file a separate suit, which is barred u/s 47(1) of the CPC and hence, trial Court ought to have allowed the application under Order VII, Rule 11 of the CPC filed by the applicants.

6. Shri Moharil, learned Counsel for the respondents, supported the impugned order and states that the suit filed by the respondents bearing No. 42/1989 is maintainable and the trial Court was justified in rejecting the application moved by the applicants under Order VII, Rule 11 of the Code of Civil Procedure.

7. I have considered the contentions of the learned Counsel for the parties and perused the provisions of Order VII, Rule 11 and Section 47 of the Code of Civil Procedure. The respondents purchased the suit house on 25-10-1978 from Brijmohan and Hiralal, who are legal representatives of original defendant No. 1 Ramprasad, during pendency of the Special Civil Suit No. 12/1971, which was decreed on 21-2-1979 by the trial Court.

8. The question which falls for consideration in the present revision is :

"Whether the respondents in the revision can be said to be representatives of either original defendant No. 1 Ramprasad or Brijmohan and Hiralal (legal representatives of Ramprasad) as per the provisions of Section 47(1) of the CPC and whether the executing Court has jurisdiction to decide the question in this regard as contemplated under Sub-section (3) of Section 47 of the CPC and whether separate suit is barred in view of Section 47 of the Code of Civil Procedure?"

9. It is proper to consider the provisions of Section 47 of the CPC before adjudicating upon the issue in question, which read thus :--

"47. Questions 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.

(2).....

(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.

Explanation I: 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."

10. Plain reading of the provisions of Section 47 of the CPC shows that it deals with the questions to be determined by the Court executing the decree and further reveals that the executing Court has jurisdiction to decide all questions arising between the parties to the suit in which the decree is passed or their representatives. However, such questions should be related to execution, discharge or satisfaction of the decree and not otherwise. In the instant case, it is an admitted position that the respondents were not parties to the Special Civil Suit No. 12/1971 and, therefore, Sub-section (1) of Section 47, which deals with this aspect, is not attracted.

11. The term "legal representative" is depicted in Section 50 of the Code of Civil Procedure, which shows that the legal representative is a person, who steps into

the shoes of judgment debtor (in a given case defendant) if he dies before the decree is fully satisfied. The holder of the decree is entitled to apply to the Court, which passed it to execute the same against the legal representatives of the deceased as contemplated by Sub-section (1) of Section 50. Similarly, Sub-section (2) of Section 50 provides the extent of decree executable against such legal representatives. The word "representative" mentioned in Sub-section (1) of Section 47 of the Code of Civil Procedure, in general parlance, refers to a person either representing original defendant in case of his death or acting in the capacity of his representative and Sub-section (3) of Section 47 gives jurisdiction to the executing Court to decide the question, if arises, as to whether a person is or is not a representative of the party.

12. In the instant case, respondents are the persons, who have purchased the suit house from Brijmohan and Hiralal during pendency of Special Civil Suit No. 12/1971, who are legal representatives of one of the original defendants, namely, Ramprasad in the said suit. On the basis of this factual aspect, it is apparent that the respondents are not in any way said to be related either in the original defendant or his legal representatives and, therefore, they cannot step into the shoes of either Ramprasad or Brijmohan and Hiralal in case of death of these persons. Hence, it is evident that the respondents do not fall within the category of representatives of defendant as contemplated under Sub-section (1) of Section 47 of Code of Civil Procedure. Consequently, the provisions of Sub-section (3) of Section 47 of the CPC are not attracted, which can be invoked only when the executing Court is required to decide a question as to whether person is or is not the representative of the party to the suit. Since I have already held that the respondents do not fall within the ambit of category of representatives, the situation contemplated under Sub-section (3) of Section 47 of the CPC does not arise.

13. It is reiterated that merely because the present respondents purchased the suit property from the legal representatives of one of the defendants does not put them in the shoes of the representatives of original defendant No. 1 Ramprasad and, therefore, in my opinion, they cannot be termed as representatives of the original defendant No. 1 and hence, Sub-section (1) of Section 47, which deals with this aspect, is not attracted. In the instant case, both the primary requirements of Section 47(1) are not satisfied, i.e. respondents were not parties to the suit and they cannot be termed as representatives of the defendant and, therefore, provisions of Sub-section (1) of Section 47 of the CPC are not attracted. Consequently, the bar of filing of separate suit provided under Sub-section (1) of Section 47 is also not applicable in the present case.

14. Explanation I to Section 47 of the CPC defines who can be called parties to the suit. Those are plaintiff whose suit has been dismissed and defendant against whom a suit has been dismissed. The present respondents in view of Explanation I cannot be said to be parties to Special Civil Suit No. 12/1971. Similarly, the

respondents have not purchased the property in question at a sale in execution of a decree. Therefore, they cannot be said to be parties to the suit in view of deeming fiction contemplated under Explanation II of Section 47 of the Code of Civil Procedure. Consequently, Sub-clause (b) of Explanation II is also not attracted.

15. For the reasons stated hereinabove, the question is answered in negative,

16. In view of the above referred legal position, objection by a person not party to the suit is not maintainable u/s 47 nor by any legal representative of a party u/s 47 is tenable nor through invoking Section 151 of the Code of Civil Procedure. The objection on the ground that he was neither properly represented nor he was a party to the decree, does not fall u/s 47 of the Code of Civil Procedure. The remedy lies in a separate suit only.

17. In the instant revision, this Court has only adjudicated upon the validity of the impugned order and has not considered whether transaction is hit by Section 52 of the Transfer of Property Act. It will be open for the parties to raise this issue in the suit.

18. No interference is called for. The civil revision application is dismissed. No order as to costs.