
(2017) 02 MP CK 0163
In the Madhya Pradesh High Court
Case No : 109-2016

Laltaprasad Sakya

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 47, Section 115 - Questions to be determined by the Court executing decree - Revision

Citation : (2017) 02 MP CK 0163

Hon'ble Judges : ASHOK KUMAR JOSHI

Bench : Division Bench

Advocate : Avinash Zargar, Amit Verma

Judgement

1. Petitioners/original judgment-debtors have filed this civil revision under Section 115 of the Code of Civil Procedure against an order passed by the Seventh Civil Judge Class-I, Bhopal, in Execution Case No.40A/2007, whereby the objection raised by the present petitioners under Section 47 of the Code of Civil Procedure has been dismissed. The judgment debtors have raised the objection in form of an application under Section 47 of the C.P.C that the decree in question is not executable inasmuch as prior permission of competent authority i.e. Sub-Divisional Officer, under the Madhya Pradesh Gandhi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976 was not obtained before filing of the suit by the respondent/original plaintiff. It would be significant to mention here that previously Executing Court by order dated 19.03.2014 rejected the aforesaid contention by holding that the similar contention was raised and rejected. Aforesaid order was called in question in Civil Revision No.190/2014 which was disposed of by this Court vide order dated 08.02.2016 with a direction to the Executing Court to decide the objection preferred by the petitioners by a speaking order within one month. In compliance to the above-mentioned direction, the impugned order has been passed.

2. Undisputedly, present respondent Smt. Prem Bai has obtained a judgment and decree dated 17.11.2006 in Civil Suit No.40A/2004 against the present petitioners as defendants for getting possession of House No.176 situated in Street No.4, Ibrahim Ganj, Bhopal. The appeal preferred by the present petitioners was dismissed by the lower Appellate Court by an order dated 12.01.2012 as barred by limitation. Thereafter, the second appeal preferred by the petitioners was also dismissed by this Court's order dated 20.02.2013.

3. In execution proceedings, the petitioners filed an application under Section 47 of the Code of Civil Procedure in which an objection was raised that the decree in question is not executable inasmuch as prior permission of competent authority i.e. Sub Divisional Officer under the Madhya Pradesh Gandhi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976 was not obtained.

4. Before Executing Court, the raised objection was denied by the decree holder by filing the written reply on the grounds that Ibrahim Ganj is not included in the Gandhi Basti. Disputed house is actually situated in Adarsh Nagar, which is adjacent to the Ibrahim Ganj, which is clear from the decree and no such objection was taken in the suit. The judgment-debtors are filing repeated applications under Section 47 of the Code of Civil Procedure only with the intention to delay the execution of decree for possession, thus prayer was made that objection of the judgment- debtors be dismissed.

5. The Executing Court by a detailed order considering the various documents filed by both the parties and referred citations, recorded the finding that the disputed immoveable property has not been declared Gandhi Basti and objections have been filed only to delay the execution proceedings.

6. Learned counsel for the petitioners placing reliance on various documents (photocopies) filed in the civil revision, which were also filed before the Executing Court, contends that according to the schedule received from the office of Municipal Corporation, Bhopal, relating to the Vidhan Sabha Kshetra, North Bhopal, Zone No.3, Serial No.4 in Ward No.17, the residential house of the petitioners is mentioned in colony situated in front of Sulabh Complex, Ibrahim Ganj Bawdi, is included in Gandhi Basti Kshetra as their residential House No.176 is situated in Street No.4 and Ward No.17. In this regard reliance has been placed on copies of maps and list of houses given in survey register relating to Jhuggi Basti, Ibrahim Ganj Colony.

7. On the other hand, learned counsel for the respondent had supported the impugned order and in this civil revision a certificate given by the City Engineer (Civil) Municipal Corporation, Bhopal dated 07.05.2016, counter signed by the Assistant Engineer, Municipal Corporation, Bhopal is also filed, in which it is specifically mentioned by each of the signing Engineers that the Adarsh Nagar, Ibrahim Ganj, Street No.4, House No.176 is not included in Gandhi Basti and it is situated at very much distance from the area which is called Ibrahim Ganj, Bawdi Kshetra, which is situated in front of the Sulabh Complex, which is included in

Gandi Basti Kshetra. It is contended that only the portion situated in front of Sulabh Complex, Ibrahim Ganj Bawdi is included in Gandi Basti Kshetra, but the Ibrahim Ganj, Adarsh Nagar, which is behind the Puttha Mill, is not included in the Gandi Basti Kshetra.

8. The learned counsel for the petitioners have placed reliance on various provisions of the Madhya Pradesh Gandi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976 and on many documents obtained by the present petitioners under Right to Information Act from the Municipal Corporation, Bhopal and Madhya Pradesh Gandi Basti Nirmulan Mandal, Bhopal. There is no place about suspicion regarding various provisions of Madhya Pradesh Gandi Basti Kshetra (Sudhar Tatha Nirmulan) Adhiniyam, 1976.

9. A certificate given by the Councillor of Ward No.17 Municipal Corporation, Bhopal dated 26.02.2016 is filed in which it is mentioned that the area which was previously called "Ibrahim Khan Ka Bagh" is included in slum area, which is marked in Zone No.4 of the relating schedule, but in this certificate also it is not mentioned that the disputed property is situated under slum area. A separate detailed list of various zones declared as Gandi Basti by Municipal Corporation, Bhopal has also been filed. Under this detailed schedule, under Zone No.4 there are 17 entries covered different areas and in Serial No.3 of Zone No.4 the colony titled "VERNACULR MATTER OMITTED" is mentioned. Thus, it is clear from this list that total Ibrahim Ganj is not included in Gandi Basti Kshetra, but only Ibrahim Ganj Bawdi area, which is situated in front of Sulabh Complex has been declared as Gandi Basti Kshetra by the Municipal Corporation itself. In this list, the area of Adarsh Nagar, Ibrahim Ganj is not included in the different items of declared Gandi Basti Kshetra. From the copy of the judgment and decree passed in relating suit, it is clear that the disputed House No.176 in which the present petitioner is residing is situated in Street No.4, Adarsh Nagar, Ibrarahim Ganj and this area is not called "Ibrahim Ganj Bawdi".

10. It appears that the learned Executing Court has discussed all the aspects in much details and has recorded clear findings. It is also clear that the relating Act is of the year 1976 and the judgment of the trial Court was passed in the year 2006. It appears from various documents that the decree passed by the trial Court was assailed by present petitioners up to the Supreme Court, but previously no any such objection was taken. Thus, it is clear that the Executing Court has not committed any illegality or irregularity in passing the impugned order.

11. The revision petition filed by the petitioners being devoid of merits is dismissed. No order as to costs.