

(1999) 03 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Revision Petition No. 26 of 1994

LRs. of Nagga Smt. Pankhi

APPELLANT

Vs

Manak Mal and Another

RESPONDENT

Date of Decision : 31-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2000) 1 WLC 738 : (1999) 1 WLN 495

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.S. Kokje, J.—This is a revision petition filed in a litigation which is going on for a long time in the lower courts. The proceedings now pending are for the execution of a decree passed on 13.7.1979. The decree was for possession of a part of the premises from which the plaintiff had claimed that he was dispossessed prior to filing of the suit and for prohibitory injunction against the judgment debtors restraining them from interfering with possession of the plaintiff on the rest of the property. Throughout the suit the defendant took a stand that they had not encroached on the property. The decree-holder during the execution of the decree found that the other portion of the property, which was not in possession of the judgment-debtors prior to filing of the suit, had been encroached upon by them after passing of the decree in violation of permanent injunction issued against them. The decree-holder, therefore, moved an application under Order 21 Rule 32(5) CPC praying for delivery of possession of the property which was encroached upon by the judgment-debtors in violation of the permanent injunction against them after the passing of the decree. In this application it was stated by the decree-holder that the judgment debtors encroached upon the premises in April 1982 and June, July, 1987 and had put up certain construction on it. It was also stated that the judgment-debtors were in physical possession of these constructions and were residing there. It was prayed

that the constructions should be demolished and vacant possession of the plot be handed over to the decree-holder in execution of the decree. The Executing Court by its order dated 4.1.1994 allowed the application and directed removal of the construction and handing over vacant possession to the decree-holder. This revision petition has been filed by the judgment-debtors against the aforesaid order.

2. The learned Counsel for the revision petitioner submitted that the decree was for possession of a portion demarcated in Red Boundaries in Exhibit-1 and the other portion was not covered by the decree of possession. According to the learned Counsel therefore, possession of any other portion than which was specifically directed to be handed over by the decree could not have been granted by the Executing Court. In support of his contention the learned Counsel relied on a decision of the Andhra Pradesh in *Y. Lakshmaiah Vs. Esso Eastern Inc. and Others*, for the proposition that for the disobedience of a prohibitory injunction, the defendants are liable to the penalties mentioned in Rule 32(1) (i.e. attachment of property or detention in Civil Court). But the Court could not invoke Sub-rule (5) to its aid (by appointing a commissioner or by giving police aid to help the decree-holder in executing the decree) in a case where there is no decree for mandatory injunction.

3. I have heard the learned Counsel and I have seen the record. Order 21 Rule 32 provides amongst other things mode of execution of a decree for injunction. Sub-Rule 5 of Rule 32 provides that where a decree for injunction has not been obeyed, the Court may in lieu or in addition to any of the process available direct that the act required to be done, may be done, so far as practicable by the decree-holder or some other person appointed by the Court at the cost of the Judgment-debtor.

4. The contention of the judgment-debtors is that the decree under execution did not direct removal of the judgment-debtors from the portion on which encroachments have been alleged to be made. There was no decree for demolishing the constructions standing on the other portion. It is therefore, contended that direction could be given under Order 21 Rule 32(5) CPC for removal of the encroachments, demolition of constructions etc. The learned Counsel for the non-petitioners on the other hand submitted that constructions, which were put up flouting the permanent injunction, could be demolished under the said provision.

5. It is not necessary for me to go into the intricacies of the questions raised by the revision-petitioners. From the record what I find is that an application under Order 21 Rule 32 CPC was made by the decree-holder on 7.12.1990 alleging that the judgment-debtors had encroached upon the portion covered by the prohibitory injunction and put up constructions thereon. He prayed for removal of these constructions and handing over possession to him under Order 21 Rule 32(5). In answer to this application, on 16.3.1991 the judgment-debtors categorically denied that they had encroached or were in possession of any

portion of land as alleged by the decree-holder. They also denied having put up any construction on the portion of which the possession was sought. They claimed some one else to be in possession. In such a situation, the question whether the decree could be executed in the manner in which it is sought to be executed is purely academic so far as the interest of the judgment-debtors is concerned. If they are not in possession, they cannot be said to be aggrieved by the order made by the Executing Court. If the possession is taken from some one else or the construction of some one else is demolished, the judgment- debtors should not be concerned.

6. In view of this, it appears to me that if the order is allowed to stand it shall not occasion failure of justice so far as the revision petitioners are concerned. In view of the proviso to Section 115 CPC, no interference can be made under the revisional powers. The revision petition is dismissed.