
(1996) 02 PAT CK 0018

In the Patna High Court

Case No : Civil Revision No. 653 of 1989 (R)

Mahabir Sharma and Others

APPELLANT

Vs

Bharat Kishore Mahto and Others

RESPONDENT

Date of Decision : 06-02-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (1996) 2 BLJR 1567 : (1996) 2 PLJR 410

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prasun Kumar Deb, J.—This revision petition has been preferred against the order dated 25.9.1979 passed by the then 1st Additional District Judge, Dhanbad, in Miscellaneous Appeal No. 82 of 1979, whereby the appeal preferred by the petitioners from the order dated 19.7.1979 passed by the then Munsif, Baghmara at Dhanbad in Execution Case No. 15 of 1975 has "been dismissed.

2. The opposite parties-decree holders got a decree in Title Suit No. 96 of 1960 for declaration of title and confirmation of possession or in the alternative for recovery of possession over the land described in the Schedule of the plaint.

3. A Survey knowing Pleader Commissioner was appointed during the pendency of the suit and the Pleader Commissioner's report was accepted by the original court in respect of the identity and measurement of the plot as contained in the Schedule of the plaint. The suit was decreed in favour of the plaintiffs-opposite parties on 8.4.1963. The petitioners who were defendants in the suit preferred as appeal against the decree which was registered as Title Appeal No. 72 of 1963. The said appeal was allowed. Then the plaintiffs-opposite parties preferred an appeal before this Court and after hearing the second appeal, this Court remitted back the case before the appellate court and the suit was decreed in the appeal. Against that order, again the petitioners-- defendants preferred Second Appeal

No. 39 of 1969 in this Court which was also dismissed by a decree dated 7.5.1975. Thus the decree passed by the learned Munsif was maintained in the second appeal also.

4. On the basis of the decree being confirmed in the second appeal, it was sought for execution in Execution Case No. 15 of 1975. The prayer in the execution petition is in the following manner:

After service of notices under Order XXI, Rule 22 of the CPC upon the judgment debtor delivery of possession of Schedule "C" land may be given to the decree holder through court with the help of the police, pleader commissioner and process server of the court. After delivery of possession cost awarded may be realised etc....

5. It appeared that objection being filed from the side of the judgment debtor-petitioners that there was difficulty in executing the decree as the Pleader Commissioner's report was not made a part of the decree, although from the trend of judgment passed in the original court and also by the appellate court, the identity was found to be established on the basis of the pleader Commissioner's report and in such sort of cases, Pleader Commissioner's report is always made a part of the decree, but due to inadvertence that report was never made a part of the decree, when it could be found that there was defect remained in the decree regarding the execution of the same, then the plaintiffs-decree holders filled petition before the Executing court itself for amending the decree by the inclusion of the Pleader Commissioner's report. After much objections being raised, the decree was amended to the extent of inclusion of the Pleader Commissioner's report within the decree itself. Against such correction or amendment of the decree, Miscellaneous Appeal No. 68 of 1977 was preferred by the judgment debtors-opposite parties before the District Judge, Dhanbad and the appellate court allowed the appeal holding that the Executing court could not go beyond the decree as there was no scope for the Executing court to amend the decree as done in the present case. The opposite parties-decree holders came up in Civil Revision No. 195 of 1977 (R) before this Court and Hon'ble Mr. Justice Nagendra Prasad Singh allowed the civil revision application by order dated 3.5.1979 after setting aside the appellate order dated 2.8.1977 holding that only due to inadvertence, the Pleader Commissioner's report was not made a part of the decree and the trial court has got every right to grant and when no revision or recourse under the law was taken by the judgment debtors-defendants against the order passing amendment of the decree, there is no scope of the judgment debtors to challenge the amended decree as a nullity in the Executing court. It must be mentioned here that a petition u/s 47 of the CPC filed by the judgment debtors-petitioners before the Executing court challenging the amendment of the decree and its execution thereof was rejected by order dated 7.7.1977, therefore, it was held that the Executing court had rightly rejected the objection u/s 47 of the CPC and the learned District Judge had approached the matter in wrong angle. The proposition that the Executing Court

cannot go beyond the decree is definitely correct but when the amended decree is sought to be executed then there is no scope of the Executing court to sit for deciding whether the amended decree was alright or not. After the revision petition was allowed, then on being moved by the decree holders-opposite parties the Executing court started processing delivery of possession on the basis of the Pleader Commissioner's report which was a part of the decree as per the amendment of the decree itself, then the present petition has been filed u/s 47 of the CPC by the Judgment debtors-petitioners mainly on the plea that the decree itself even after the amendment is a nullity and the old plea regarding jurisdiction of amendment of the decree. It is stated further in the petition u/s 47 that the decree even on the basis of the Pleader Commissioner's report is not maintainable for execution as there is no such land available in the locality. Practically, this was the plea in the itself for which the Pleader Commissioner was appointed for identifying the land in question and the same was properly identified and the report of the Pleader Commissioner was accepted and then after amendment, the said report was made a part of the decree. There is no scope of raising such objection u/s 47 of the Code of Civil Procedure.

6. Mr. V. Shivnath, appearing for and on behalf of the judgment debtors-petitioners submitted that when the plea has been taken regarding non-executability of the decree it is the bounden duty of the Executing Court to enquire into such petition after registering the same as Miscellaneous Case and such enquiry should be made after giving opportunity to both the parties. There is no scope of rejecting the petition u/s 47 forthwith without holding enquiry. He has referred to a decision of the Apex Court in Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another, in support of his submission. It is true that when a valid question has been raised regarding the executability or otherwise of the decree sought for execution then the Executing court is duty bound to enquire into the same as contemplated u/s 47 of the CPC but if such petitions are filed deliberately to stop the execution proceeding without any valid question being raised then the Executing Court is definitely at liberty to forthwith reject the same as fallacious without going for enquiry as contemplated u/s 47. This is the established principles of law by this time because it is seen that the judgment debtors taking advantage of the provision of Section 47 comes with flimsy allegation only to defeat the cause of the decree holders and to delay in the proceeding, the same thing has happened in the present case. The petition u/s 47 of the CPC filed earlier had ended against the judgment debtors by a judgment of this Court in Civil Revision No. 195 of 1977 (R). There was every possibility of the judgment debtors to raise the question about the non-existence of the land in the locality in Section 47 petition earlier rejected but they have not done so. Now again, they have filed a petition u/s 47 with the same plea regarding the amendment of the decree which has already been set at rest by this Court and now another plea has been about the identity of the land in the locality. That point had already been decided in the suit and the report of the Pleader Commissioner was accepted and after that by amendment, the

pleader Commissioner's report was made part of the decree, the decree holders, although long 35 years have passed, could not get the fruit of the decree because of the objections being raised at every point by the judgment-debtors-defendants.

7. On scrutiny of the execution petition u/s 47 of the Code of Civil Procedure, I could find that practically there is no valid point raised by the judgment debtor for holding enquiry u/s 47 rather it was filed only with the motive of delaying the execution process as rightly held by the learned Executing Court.

8. For the reasons aforesaid, I do not find any force in the revision petition and hence the same is dismissed but without costs.