

(2005) 11 GAU CK 0012

In the Gauhati High Court

Case No : Regular Second Appeal No. 145 of 2005

Manju Boro and Others

APPELLANT

Vs

Karuna Kanta Boro and Others

RESPONDENT

Date of Decision : 23-11-2005

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Order 21 Rule 103, Order 21 Rule 18, Order 21 Rule 97, 100, 101

Citation : (2006) 1 GLT 752

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : P.K. Deka, P.B. Hati Kakoti, H. Deka and R. Sarma, for the Appellant; K. Bhatta and S. Ali, for the Respondent

Final Decision : Dismissed

Judgement

A. Hazarika, J.—Heard Mr. P.K. Deka; learned Counsel for the Appellants and also heard Mr. K. Bhatta, learned Counsel appearing on behalf of the Respondents.

2. This second appeal arises out of the judgment and order dated 07.6.2005 passed in Title Appeal No. 04/2005 by the learned Civil Judge (Sr. Divn.), Kamrup, Guwahati. The aforesaid appeal was filed challenging an order dated 10.1.2005 passed in Misc. (J) Case No. 12 of 2004 in Title Execution Case No. 2 of 2004 and No. 3 of 2004 pending in the court of the learned Civil Judge (Jr. Divn.), Rangia. It is stated herein that in the Title Execution cases that are pending before the learned Civil Judge (Jr. Dv.), Rangia, an application under Order 21 Rule 97 read with Section 101 of CPC was filed by the Appellant objecting the execution of the decree. The aforesaid execution cases were started to execute the decree passed in T.S. No. 9/ 2001 and T.S. No. 10/2001, after affirming the same vide judgment and order passed in the Title Appeal Nos. 18 and 19 of 2003 preferred by the present Appellants.

3. It is also relevant to mention here that the present Appellants have filed another suit vide T.S. No. 59 of 2004 which is pending in the court of the learned

Civil Judge (Sr. Divn.). Rangia, Kamrup, Guwahati wherein the declaration of right, title and interest for cancellation of the sale deeds of the Plaintiffs along with proforma Respondent No. 13 in respect of the same suit land is involved. The aforesaid suit was filed on 08.3.2004. In the T.Ex. Case No. 2/2004 and T.Ex. Case No. 3/2004, the Appellants filed the aforesaid application under Order 21 Rule 97 and 101 of the CPC resisting the execution of the decree in favour of the Respondents.

4. The main judgment debtor also filed Misc. Case No. 6 of 2004 and Misc. Case No. 7 of 2004 resisting the aforesaid T.Ex. Cases, which was eventually come to be dismissed. During the course of hearing of the aforesaid application filed by the present Appellant, the Appellant examined two witnesses in support of their case whereas the present Respondents have examined none and relied on earlier materials available in the main suit. The learned Civil Judge (Jr. Divn.), Rangia, Kamrup, Guwahati having rejected the prayer of the Appellant, an appeal being Title Appeal No. 4 of 2005 was filed by the present Appellant and the same was also dismissed.

5. It appears from the record that the prayer of the judgment debtors having been rejected, the present Petitioners, who are the heirs of the judgment debtors, filed application repeating the prayer to resist the execution. The learned appellate court also having considered the materials on record and on appreciation of the necessary facts dismissed the appeal that was filed after rejection of the prayer by the learned executing court.

6. Mr. R.K. Deka, learned Counsel appearing for the Appellants has raised the substantial question of law that the learned Court below erred in law in not accepting the evidences adduced on behalf of the Appellant and on the face of not having any counter evidence on behalf of the Respondents and consideration of the materials of the original Title Suit was illegal. It is also submitted that, the decree, in question, is binding upon the parties and the present Appellant not having been a party in the suit the decree is not binding upon them.

7. Mr. K. Bhatta, learned Counsel appearing for the Respondents on the other hand has submitted that the learned court below has decided the matter on proper appreciation of the facts and circumstances of the cases, more particularly, on proper consideration of the materials and evidences on record and the findings which are factual in nature, and thus, there is no scope for interfering by this Court in exercise of the power u/s 100 of the Code of Civil Procedure, in the instant Case.

8. I have considered the rival submissions made by the learned Counsel for the parties. The original T.S. No. 9 of 2001 and T.S. No. 10 of 2001 were decreed vide judgment and order dated 21.7.2003. Appeal having been preferred against the said judgment and order being Title Appeal No. 18 of 2003 and Title Appeal No. 19 of 2003 the same was dismissed vide judgment and decree passed by the learned Civil Judge (Sr. Divn.), Guwahati and there having no further appeal the

decree attained its finality. The decree was put into execution by filing T.Ex. Case No. 2 of 2004 and T.Ex. Case No. 3 of 2004. The original judgment debtor filed an application u/s 47 CPC resisting the execution, which came to be dismissed by the learned Executing Court and thereafter, the present Appellants, who are the son and daughters of the main judgment-debtor filed an application under Order 21 Rule 97,101 of CPC and out of which the present proceeding arises. The learned Executing Court in dismissing the application of the Appellants, discussed the evidence adduced on behalf of the Appellant and after elaborate discussions, came to finding based on facts, inter alia disbelieving the possession of the suit land by the Petitioners. The learned appellate court also considered the necessary materials and evidence on record and on such consideration did not find anything in interfering by the court and dismissing the appeal. Both the Courts below arrived at concurrent findings on fact and on such finding the impugned order was passed.

9. The submissions of Mr. Deka relating to the powers of execution of this Court in deciding suit application filed on behalf of the Appellant/third party requires me to have a glance under the provisions of Order 21 Rule 97 and 103 of CPC. Admittedly, the aforesaid powers are summary in nature and although it is to be tried as a suit in terms of Rule 97 read with 103 Code of Civil Procedure, the relevant questions are to be determined in a summary manner. The Apex Court in the case of *Ghasi Ram and Ors. v. Chair Ram Saini and Ors.* reported in (1998) 6 SCC 2000, describing the scope of Suit power at para 7, it is inter alia held as follows:

7. A perusal of the aforesaid provisions would show that the scheme commencing under Rule 97 and onwards before the enactment of the Amendment Act, 1976 was that where a decree-holder or the purchaser at the court sale of property was obstructed in obtaining possession of such property by any person, he was entitled to apply to the court complaining of such resistance or obstruction. On such an application, the executing court was required to make a summary inquiry in regard to the question of possession. In such an inquiry, it was not permissible to the parties to lead evidence and insist upon an elaborate hearing. After inquiry, if the court was satisfied that the obstruction was occasioned without any just cause by the judgment-debtor or by any other person, the court was empowered to put the party in possession over the property. But if the obstruction was offered by a person other than the judgment debtor, claiming possession over the property in good faith, the court was entitled to dismiss such application. If an order was passed under Rule 98 allowing the application under Rule 97 Code of Civil Procedure, such an order was conclusive between the parties except that a party other than the judgment-debtor against whom the order was passed was entitled to file a fresh suit under Rule 103 to establish his right to the possession. It is with reference to these provisions that Article 11-A of Scheduled I of the Act provided the period of one year to be computed from the date of the order passed under Order 21 Rule 98 Code of Civil Procedure. However, the position has changed after amendment of the CPC by the

Amendment Act of 1976. Now, under the amended provisions, all questions, including right, title, interests in the property arising between the parties to the proceedings under Rule 97, have to be adjudicated by the executing court itself and not left to be decided by way of a fresh suit.

10. The learned Court below has not left out any relevant facts and considering the relevant facts of law for decision of this case passed the impugned judgment and on the face of this factual position so arrived rejected the prayer of the Appellant. Those are concurrent findings of fact.

11. Mr. Bhatta, learned Counsel for the Respondents refuting the submission of Mr. Deka that the Appellant was not impleaded as party in the suit relied on a decision reported in M.K. Venugopal Vs. Aswathamma,) wherein the learned Single Judge of the Karnataka High Court specifically stated the fact inter alia that would not effect the case of the Plaintiff.

12. In the instant case, the present Appellants are the son and daughters of the judgment-debtor and whatsoever from the right of their father mother/parents having been impleaded as party, no complaint can be made for non-impleament of the children.

13. On the aforesaid consideration the substantial question of law sought to be raised by the Appellants do not emerge and those are concurrent findings of facts, not justifying any interference by this Court in exercise of the power u/s 100 of Code of Civil Procedure.

14. Accordingly the appeal stands dismissed.

15. No cost.