
(2003) 05 AHC CK 0072
In the Allahabad High Court
Case No : C.M.W.P. No. 7540 of 1980

Mool Chand

APPELLANT

Vs

Third Addl. District Judge

RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 95, Order 8 Rule 10
Constitution of India, 1950 — Article 226

Citation : (2003) 6 AWC 5561

Hon'ble Judges : D.P. Singh, J

Bench : Single Bench

Advocate : B.D. Mandhyan and S.C. Asthama, for the Appellant; R.N. Singh, S.N. Singh, A.N. Misra and Y.D. Dwivedi, S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—Heard learned Counsel for the parties.

2. This writ petition is directed against concurrent orders dated 20th December, 1979 and 26th August, 1980 by which an application of a auction purchaser in a execution case has been allowed with respect to amendment of the plot numbers of the property so sold in his favour.

3. Brief facts for the decision of this writ petition are that the Petitioner and the Respondent No. 5 had mortgaged plot No. 33 having an area of 1 bigha 6 biswas in favour of Respondent No. 3 vide deed dated 1.3.1967. As the mortgage was not satisfied, Respondent No. 3 instituted a Suit No. 324 of 1968 for recovery of the amount in question and in the alternative for the sale of the mortgaged property. After contest, the suit for sale of mortgaged property was decreed and the same was put to auction in execution of the aforesaid decree on 16.3.1973. The Respondent No. 4, auction purchaser, was the highest bidder and the sale was confirmed in his favour on 9th September, 1975. A sale certificate was also issued in favour of the auction purchaser on 27th November, 1979. However, the warrant for delivery of possession was issued in Form No. 11 instead of Form No.

39 of Schedule I of the Code of CPC Thus, instead of the name of the auction purchaser, the name of the decree holder was shown as the person to whom the delivery was to be made. It also appears that in the meantime consolidation operations intervened and plot No. 33 was fragmented into different plots. All this prompted the auction purchaser into filing an application on 14th December, 1979, to the effect that his name be mentioned in the delivery warrant instead of the name of the decree holder. A further prayer was made that the number of the plot be mentioned as plot Nos. 47 and 48. The ground for the latter amendment was that substantially plot Nos. 47 and 48 consisted of the land of plot No. 33 and both the plots had been allotted in consolidation operations to the Petitioner. The Petitioner filed objection to the aforesaid application, however, the executing court vide order dated 20th December, 1979 allowed the amendment as aforesaid. Aggrieved, the Petitioner approached the revisional court which too maintained the order of the executing Court and dismissed the said revision.

4. The only contention raised on behalf of the Petitioner is that no such correction could be made by the executing court and in fact the application itself was not maintainable, since the auction purchaser was not party to the decree and at best he was entitled to the auction money in lieu of sale.

5. It is not disputed that during consolidation operations, the land of plot No. 33 was fragmented into three plots. One biswa was made part of plot No. 46 which was allotted to some other person than the judgment-debtor. Out of the remaining, three biswas formed part of plot No. 47 and one bigha two biswas was included in plot No. 48. Both these plot Nos. 47 and 48 were allotted to the judgment-debtor. The auction purchaser, in view of the aforesaid changes, gave up his claim so far as the land of plot No. 33 which was included in plot No. 46 and was allotted to some other person. The auction purchaser had only laid claim to the land of plot Nos. 47 and 48 which admittedly were allotted in favour of the Petitioner and substantially comprised of land of plot No. 33.

6. The Petitioner in support of his contention has relied upon the decision of this Court in *Firm Roshak Lal Gulzari Lal and Others Vs. Firm Ramesh Chand Vinod Chand*, . In this case, the facts were that the land sold in the Court auction was completely allotted to another person during consolidation operations. Therefore, the Court held that provisions of Order XXI, Rule 95 Code of CPC would not apply and the sale was hit by the doctrine of frustration. In my view, the ratio rendered in the aforesaid case would not apply to the case at hand. In the present case, substantial portion of the plot remained with the judgment debtor, though the numbers had been changed. It is not the case of the Petitioner that the boundaries were also changed. Though, the Petitioner has failed to file either a copy of the decree or the plaint. Thus, the ratio of *Roshak Lal Gulzari Lal (supra)* are not attracted.

7. The counsel for the Petitioner has also relied upon a decision of the Apex Court in *M/s. Plasto Pack, Mumbai and Another Vs. Ratnakar Bank Ltd.*, . In that case,

the Court was concerned with amendment of a decree passed under Order VIII, Rule 10, C.P.C., which was sought to be made after about three years of the passing of the decree. In my view, the facts of the case are not applicable to the facts of the present case.

8. The Petitioner does not dispute the mortgage, nor the sale or its consideration but on a mere technicality, he has approached this Court. Sir Vivian Bose said, "It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties, not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it...." in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, . In this case also, the Petitioner has approached this Court on a mere technical plea.

9. In my view, both the orders have done complete justice between the parties and this Court under Article 226 of the Constitution of India ought not to exercise its discretion on mere technicalities when substantial justice has been done between the parties.

10. In view of the foregoing conclusions, the writ petition fails and is dismissed with costs.