

(2011) 03 CAL CK 0139
In the Calcutta High Court
Case No : C.O. No. 1444 of 1991

Namita Bhattacharjee (dead) and Another	APPELLANT
Vs	
Rajendra Prosad Gupta (dead) and Others	RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : (2011) 03 CAL CK 0139

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Asim Kumar Banerjee and Bholanath Prmanik, for the Appellant;
Ram Prakash Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is directed against the order No. 56 dated February 15, 1991 passed by the learned Judge, City Civil Court, Second Bench, Calcutta in Misc. case No. 993 of 1990 arising out of the Title Execution Case No. 120 of 1982.

2. The short fact necessary for the purpose of disposal of this application is that the Petitioners/decreed holder obtained a decree for recovery of possession against the 8 Defendants in respect of the suit properties mentioned in the schedule of the plaint of the title suit being Title Suit No. 626 of 1979. That decree was put into execution by filing the execution application being Title Execution Case No. 120 of 1982. The opposite party filed an application u/s 47 of the CPC contending, inter alia, that his father, Narayan Lal Gupta, died 10 years back before the institution of the suit and so the decree obtained against the 8 Defendants including Narayan Lal Gupta is a nullity and the same is not executable. By the impugned order, the learned Judge has allowed the misc. case accordingly. Being aggrieved by such orders, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the submission of the learned Advocates of both the sides and on perusal of the materials on record, I find that on April 6, 1979, the Petitioners instituted a Title Suit No. 626 of 1979 for recovery of possession on the ground of efflux of time of the lease granted for 21 years. The Defendant No. 1 was the lessee and the suit was filed for recovery of possession against the lessee and other sub-tenants under him after efflux of time of the lease of 21 years. That suit was decreed on contest against the Defendant No. 1 and ex parte against the other Defendants. Summons was sent to the opposite parties. But, they did not contest the said suit and as such, the suit was decreed ex parte against the rest 7 Defendants. The Defendant Nos. 2 to 8 were not necessary parties to the suit but they were impleaded to avoid any complication at the time of execution. Thereafter, the decree obtained by the Petitioners were put into execution. At that time, the opposite party No. 1 appeared and filed an application u/s 47 of the CPC contending that his father Narayan Lal Gupta was one of the Defendants and he died on November 13, 1969 and so the decree was a nullity. His application numbered as Misc. Case No. 993 of 1990 was, thus, allowed by the learned Judge by the impugned order. The contesting Defendants or any other Defendants did not inform that Narayan Lal Gupta, one of the sub-tenants, died before the institution of the suit and in fact, he was not a lessee under the Petitioners at all. The lessee, that is, the Defendant No. 1 is bound to re-deliver possession after efflux of time to the landlords and there was no privity of contract between the landlord and the sub-tenants. So, the Defendant No. 1 was bound to deliver possession to the landlords. If any sub-tenant who had no privity of contract with the landlord, died, for that reason, the decree passed against the lessee cannot become a nullity. So, the observations made by the learned Trial Judge cannot be supported.

5. The learned Advocate for the opposite party has referred to 50 CWN 801 and Kanailal Manna and Others Vs. Bhabataran Santra and Others, and he has submitted that the learned Trial Judge has rightly held that the decree is a nullity. The facts of those two cases are quite distinguishable from the present one. The ratio of the two cases is not applicable in the present case. At best, it could be held that the decree against a dead person is a nullity; but the entire decree, I hold, cannot be said to be a nullity at all.

6. Moreover as per decision in an earlier civil revision being C.O. No. 2333 of 1990 dated February, 1990, this Hon"ble Court has specifically directed the learned Trial Court to decide whether the decree against the Narayan Lal Gupta is a nullity or not and that direction was not followed by the learned Trial Judge at all. Therefore, the impugned order cannot be supported at all. Appropriate steps may be taken in this regard. In the meantime, the decree could well be executed against the rest judgment debtors. The learned Trial Judge has committed material irregularity in observing that the decree was a nullity as a whole. The impugned order, therefore, cannot be sustained. The application, therefore, succeeds. It is allowed. The impugned order is hereby set aside. The Misc. Case bearing No. 993 of 1990 stands disposed of with the observations above.

7. The execution case shall proceed in accordance with the observations made above and in accordance with the law. Considering the circumstances, there will be no order as to costs.

9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.