
(2008) 02 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Revision Petition No's. 67 and 103 of 2007

Narendra Kumar Johri

APPELLANT

Vs

Kanti Lal and Others

RESPONDENT

Date of Decision : 25-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97

Citation : (2008) 2 WLN 445

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—S.B. Civil Revision Petition No. 67/2007 and S.B.Civil Second Appeal No. 103/2007, both were heard together because of involvement of common questions of facts and laws, in view of the request of learned Counsel for both the parties.

2. S.B. Civil Revision Petition No. 67/2007 has been preferred by the petitioner against the order dt. 27.02.2007 passed by the learned Civil Judge (Sr.Div.), Jodhpur in Execution Case No. 60/2003 (67/2006) - Kanti Lal v. L.Rs. of Chand Kumari, whereby the petitioner's objection against the execution of the decree, passed in favour of respondent and against petitioner's mother for eviction in suit No. 52/72, has been dismissed and warrant of possession was issued.

3. Same Narendra Kumar also submitted an application under Order 21 Rule 97, C.P.C. in the same execution of decree passed in Civil Original Suit No. 52/72 raising objection against the execution of the same decree.

4. The petitioner Narendra Kumar's objections under Order 21 Rule 97, C.P.C. were registered as S.B. Civil Misc. Case No. 27B/05 (1/05) and after hearing the parties, the petitioner's application under Order 21 Rule 97, C.P.C. was dismissed by the trial Court vide order dt. 29.01.2007. The petitioner's Execution First Appeal No. 12/07 challenging the executing Court's order dt. 29.01.2007 was dismissed by the Court of Addl. District Judge No. 1, Jodhpur

vide order/judgment dt. 16.03.2007. To challenge above two orders, the petitioner has preferred S.B.Civil Second Appeal No. 103/07 by deeming the orders of the Court below as decree.

5. It will be appropriate to narrate the facts of the case in brief. The respondent-decree holder Kanti Lal filed one suit for eviction against the petitioner and his mother as back as on 04.12.1975 in the Court of Addl. Civil Judge, Jodhpur and that suit was registered as Civil Original Suit No. 52/ 72. That suit was filed with the allegation that the petitioner-appellant and his mother Chand Kumari were tenants of plaintiff Kanti Lal on rent of Rs. 50/- per month. In the suit, the petitioner-appellant and his mother both submitted that they are not tenants in the property in dispute, however, the trial Court decreed the suit of the plaintiff Kanti Lal vide judgment and decree dt. 24.07.1978. In that suit, it was held that the petitioner was not the tenant of plaintiff Kanti Lal and the petitioner-appellant's mother Chand Kumari alone was tenant in the suit property. It will be worthwhile to mention here that the trial Court held that the petitioner-appellant was doing all the works of his mother Chand Kumari and paid the rent to plaintiff on behalf of his mother Chand Kumari. Defendant Chand Kumari alone preferred First Appeal No. 66/78 to challenge the trial Court's judgment and decree dt. 24.07.1978. She did not implead her son and petitioner-appellant in said appeal No. 66/78 even as respondent. The appeal was allowed by the Court of Addl. District Judge No. 2, Jodhpur vide judgment and decree dt. 05.04.1980 and the plaintiff Kanti Lal's suit for eviction of his tenant was dismissed.

6. Against said judgment and decree of the appellate Court dt. 05.04.1980, the plaintiff-respondent Kanti Lal preferred S.B. Civil Second Appeal No. 152/ 80 before this Court which was allowed by this Court vide judgment and decree dt. 14.01.2000. The judgment and decree of this Court dt. 14.01.2000 was challenged by preferring Special Leave to Appeal (Civil) No. 3987/2000 which was allowed by the Hon'ble Apex Court vide order dt. 31.10.2001 and the judgment of this Court dt. 14.01.2000 was set aside. The Hon'ble Supreme Court remanded the matter back to the High Court, upon which the S.B.Civil Second Appeal No. 152/80 was again heard and decided by this Court (by me) vide detail judgment dt. 07.01.2004. It appears that again Special Leave to Appeal(Civil) No. 4520/2004 was preferred by judgment debtor Chand Kumari through her legal representative before Hon'ble the Supreme Court, that too was dismissed by the Hon'ble Supreme Court on 29.03.2004.

7. When the non-petitioner, after long litigation of 34 years, wanted to reap the fruits of the decree and sought execution of the decree in question, then the petitioner-appellant, who was as defendant in the above suit and was found only agent of the tenant his own mother in property, submitted separate objection in the execution petition as well as one petition under Order 21 Rule 97, C.P.C.

8. The petitioner-appellant's plea against the execution of the decree in suit No. 52/72 is that he is in occupation of the property in dispute as owner and the property in question is his ancestral property. He declares so in the suit No.

52/72 itself in his written statement. The petitioner further submitted that the title has become perfect by adverse possession as he is in possession in the knowledge of the decree holder and declaration of his hostile title against the decree holder was in the knowledge of the decree holder since beginning and more than 12 years have already passed. The petitioner also took same plea in response to the notice which he received from the Hon?ble Supreme Court in the appeal preferred by the other legal representatives of Chand Kumari. He also stated that he let out this property time to time and also gave property on licence basis to others which was never objected by the respondent-decree holder. The petitioner also submitted that he gave part of the property to Sanjay Traders and to one Abdul Sattar for his car wiring business etc. He also stated that in the garb of decree obtained against his mother Chand Kumari, the petitioner cannot be evicted.

9. The petitioner?s above pleas were contested by the decree holder and as stated above, the two Courts below have already rejected the petitioner?s contentions.

10. In support of his contention, the petitioner gave his statement in the trial Court and produced witness Madan Lal. A bare perusal of the application filed under Order 21 Rule 97, C.P.C. discloses that the petitioner failed to even plead any fact about the vesting of title of the property in any of the petitioner?s ancestors so as to claim right, title or interest in the property after the death of his ancestors. The petitioner even could not disclose who was the original owner of the property and who are the successors and how he alone became the owner of the property or even co-owner of the property. Nothing in evidence also to prove the above fact of property being his ancestral. It is case of no evidence on this issue. Coupled with this fact, his own mother suffered decree for eviction after taking same plea which the petitioner took in this objection long ago and in that litigation this plea was rejected by the Courts here and the eviction decree against his mother holding her to be the tenant in the suit property stands decreed by the Courts and ultimate decision attained finality by the decision of the Hon?ble Supreme Court in the SLP preferred by the legal representatives of petitioner?s mother. It appears that the petitioner?s entire case is that since he claimed himself to be the owner of the property or he claimed the property to be his ancestral since beginning and also filed affidavit in the Supreme Court claiming himself to be the owner of the property and that act of the petitioner-appellant is sufficient to prove his title to the property. The plea may be relevant for the purpose of claiming title by adverse possession but not a proof for title otherwise than by adverse possession.

11. So far as plea of adverse possession is concerned, firstly, the petitioner was defendant in the suit filed by respondent Kanti Lal as back as in the year 1970. In his presence, a decree was passed wherein he was declared to be mere agent of his mother Chand Kumari and the Court recorded the finding that he was looking after all the works of his mother and also paid the rent of the suit

premises on behalf of his mother to the landlord or landlord's brother. The petitioner's mother and thereafter her other legal representatives, except the petitioner contested the said findings of the trial Court by preferring first appeal and when legal representatives of petitioner's mother lost in the second appeal here, then by preferring Special Leave to Appeal before Hon'ble the Supreme Court. The petitioner's mother tried to save her possession on the basis of her claim of title in property as her ancestral and the Court decreed that she should deliver possession to the decree holder as she is tenant of respondent. Chand Kumari died and as legal representative the petitioner could have challenged the finding of the Court about Chand Kumari's title or status as tenant but he did not do so. Then the petitioner, as heir of deceased Chand Kumari, is bound by the finding recorded in Suit No. 52/72. It was never the case of the petitioner anywhere that Chand Kumari, his mother was never in possession of the property. When petitioner failed to plead and prove that unless he got the possession by virtue of death of his mother being her legal heir or with the permission of his mother, how he came in possession. As the facts disclose, the petitioner was looking after all the works of his mother then in natural course, if he is in possession of the property, then only through his mother and not in his independent capacity.

12. In view of the above and apart from the oral evidence of the petitioner and his witness Madan Lal's oral evidence, there is nothing on record which may be treated to be any evidence for proving that the petitioner was in possession of the property and his mother was not in possession or the petitioner was not working for her mother in the suit premises or he did not pay the rent on behalf of her mother to the respondent for the property in question itself.

13. In view of the above, neither the petitioner could prove his independent title or interest in the property nor he has proved that he is not bound by the decree and his possession is not through his mother. In view of the above, in addition to reasons given by the trial Court and the appellate Court, I do not find any merit in this second appeal. Therefore, S.B.Civil Second Appeal No. 103/2007 is dismissed.

14. In the revision petition, nothing has been argued and the arguments were confined to the objections raised under Order 21 Rule 97, C.P.C., the revision petition can be dismissed only on this ground but after going through the reasons given by the execution Court, as given in the impugned order dt. 27.02.2007, I do not find any illegality in the impugned order. Therefore, S.B. Civil Revision Petition No. 67/2007 is dismissed.