
(2002) 09 AHC CK 0254
In the Allahabad High Court
Case No : C.M.W.P. No. 19240 of 1993

Noorain Ali and Others

APPELLANT

Vs

Special Additional District Judge, Varanasi and Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 226

Citation : (2002) 5 AWC 4039 : (2003) 94 RD 184

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Arun Kumar Gupta and Sarita Singh, for the Appellant; Vinrendra Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J.—An agreement to sell was executed by the father of the Petitioners on 29.6.1965 in favour of the Respondent No. 3 with respect to Arazi No. 112 for a consideration of Rs. 2,000 out of which Rs. 1,500 was paid in advance and balance amount of Rs. 500 was to be paid at the time of the execution of the sale deed. Since the sale deed was not executed by the father of the Petitioners, Respondent No. 3 filed Original Suit No. 188 of 1966 for specific performance of the agreement. After 20 years, on 31.1.1986, the suit was decreed in favour of the Plaintiff-Respondent No. 3 and the Petitioners, who were Defendants in the suit, were directed to execute the sale deed in favour of the Plaintiff after receiving the balance amount of Rs. 500 and in case if the Defendant did not execute the sale deed, the Plaintiff could get the sale deed executed through the Court. Against the said judgment and decree of the trial court, the Petitioners filed Civil Appeal No. 48 of 1986. The Respondent No. 4 had also filed an appeal bearing No. 103 of 1986. Both the appeals were connected and dismissed by a common judgment on 27.5.1989. Against the aforesaid appellate order, the Petitioners filed a Second Appeal No. 1670 of 1989, which appeal is still pending and has not been admitted nor stay order has been passed.

2. After dismissal of the civil appeals by the lower appellate court, Respondent No. 3 filed an Execution Case No. 22 of 1990. The Petitioners filed their objections u/s 47 of the CPC mainly on the ground that the decree passed by the trial court was not executable as the property in question was not identifiable as no boundaries of the arazi in question were given in the plaint. The execution court, vide judgment and order dated 1.2.1992, dismissed the objections of the Petitioners. Against the said order, the Petitioners filed a Civil Revision No. 45 of 1993 which was also dismissed by Respondent No. 1, Special Additional District Judge, Varanasi, vide its judgment and order dated 17.5.1993. This writ petition has been filed challenging the aforesaid orders dated 1.2.1992 and 17.5.1993 passed by Respondent Nos. 2 and 1 respectively in the execution proceedings.

3. I have heard Sri Arun Kumar Gupta, learned Counsel appearing for the Petitioners and Sri Vinrendra Singh, learned Counsel appearing for the contesting Respondent No. 3 at length.

4. The facts, as mentioned above, have not been disputed by the learned Counsel for the parties. It is not disputed that an agreement to sell was executed in 1965 and the suit for specific performance was filed in the year 1966. After having lost from the trial court as well as the first appellate court, the objections on the application for execution were filed by the Petitioners before the executing court. The executing court decided the same by its order dated 1.2.1992. However, the proposed sale deed filed by the Plaintiff-Respondent No. 3 had been returned by the executing court, to be presented afresh in accordance with the decree. The revisional court while dismissing the revision, has considered the objections of the Petitioners in details. It has also been considered that the matter was filed in the year 1966 and although the decree was passed in favour of Respondent No. 3, the Petitioners were trying to delay its execution on one ground or the other. The revisional court, thus, also held that the objections raised by the Petitioners were only to stall the execution proceedings and dismissed the revision.

5. After having heard learned Counsel for the parties and perused the record, I do not find any illegality or infirmity in the order passed by Respondent Nos. 1 and 2 impugned in this writ petition. This Court exercises discretionary jurisdiction under Article 226 of the Constitution of India. No person is entitled to indulgence from this Court when by his conduct, he tries to delay the process of law. In the present case, the Petitioners have lost from both the courts below and have been trying to delay the execution of the decree on some ground or the other. The agreement to sell was executed in the year 1965 and since then more than 37 years have passed but the decree holder has not been able to enjoy the fruits of the decree. On merits as well as on equity, the Petitioners are not entitled to any discretion from this Court.

6. In the result, the writ petition is accordingly dismissed. Since the matter has been pending since long, it would be desirable that the Execution Case No. 22 of 1990 is heard and decided expeditiously, without granting any adjournments

unless found very necessary.