
(2011) 01 AHC CK 0137
In the Allahabad High Court
Case No : Writ C. No. 33008 of 1998

Prahlad Prasad and Others

APPELLANT

Vs

The 2nd A.D.J. and Others

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, Order 21 Rule 2, 146, 151, 2(3)
Land Acquisition Act, 1894 — Section 18
Transfer of Property Act, 1882 — Section 130

Citation : (2011) 01 AHC CK 0137

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. Late Smt. Vishvi Devi was owner of plot No. 29 area 0.67 acres which was acquired under Land Acquisition Act. Certain amount was offered by the S.L.O. as market value and solatium etc. Dissatisfied with the offer late Sri Vishvi Devi requested S.L.O. to make reference to the District Judge, u/s 18 of the Land Acquisition Act which was accordingly made. The District Judge Ballia decided the reference (L.A. Reference No. 44 of 1981) on 30.09.1991 and determined the entire compensation payable as Rs. 5.66 lacs and odd. Copy of the said judgment is Annexure 1 to the writ petition.

3. During the pendency of the reference before the District Judge the original applicant Smt. Vishvi Devi had died and had been substituted by her two sons and two daughters. One of the sons is Petitioner No. 1. The other son is Respondent No. 2 Sri Kashi Nath Prasad and two daughters are Petitioner Nos. 2 and 3 Yashoda Devi & Vidya Devi (Petitioner No. 2 has died and has been substituted by her legal representatives). Thereafter, two execution cases were filed one by Respondent No. 2 which was registered as execution case No. 10 of

1991 claiming the whole awarded amount (para 9 of writ petition). The other execution case was filed by the Petitioner No. 1 which was registered as execution case No. 4 of 1992 claiming half of the awarded amount. In the execution case filed by Respondent No. 2, Petitioner No. 1 filed objection u/s 47 Code of CPC which were registered as case No. 168 of 1992. (The State deposited Rs. 5.94 lacs as total payable compensation till the date of deposit, adding interest to the total awarded compensation by the D.J.). Respondent No. 2 filed two documents purported to have been executed by his sisters i.e. Petitioner Nos. 2 and 3 on 06.04.1992 and 08.04.1992, true copies of which are Annexure Nos. 2 and 3 of the writ petition. It is mentioned in the said documents that the executants were transferring their right/share in the decree(award) in favour of their real brother Kashinath (Respondent No. 2) through the said deeds.

4. However after about five years both the ladies changed their stand and asserted that they had no share in the land hence entire awarded compensation shall be given to both their brothers in equal share. Annexure 5 to the writ petition is an application by Smt. Vidwati Devi Petitioner No. 3, dated 22.02.1997, in para 5 of which it was mentioned that the applicant had no concern with the compensation awarded in respect of acquired plot (i.e. plot No. 29) and she did not want to take that. It was further stated therein that the amount of her share in the compensation might be given to both the brothers (Petitioner No. 1 and Respondent No. 2) in equal share. Annexure VI A is her affidavit sworn on 17.05.1997 to the same effect. Annexure 6 is copy of similar application by original Petitioner No. 2 late Smt. Yashoda Devi dated 19.05.1997 and her affidavit sworn on 17.05.1997. 5. The learned II A.D.J. Ballia decided both the execution cases and the objection u/s 47 Code of CPC through judgment and order dated 14.09.1998 Annexure 10 to the writ petition which has been challenged through this writ petition. The learned A.D.J. held that the share of the ladies/sisters should go to Respondent No. 2 hence he must get 3/4 of the awarded compensation and Petitioner No. 1 shall get 1/4.

5. In the entire writ petition in which daughters of the original owner are Petitioners No. 2 and 3, the fact of execution of the documents dated 06.04.1992 and 08.04.1992 by Petitioner Nos. 2 and 3 has not been denied. Only technical flaws in the said documents have been pointed out such as documents not proved in accordance with law (para 28 of the writ petition), the receipts can not be termed as deeds of assignment nor they connote any conveyance and there were no stamps on the receipts (para 29), the receipts can not make the share of Respondent No. 2 as 3/4 (para 30) and that subsequent applications and affidavits of Petitioner Nos. 2 and 3 amounted to withdrawal of their earlier deeds dated 06.04.1992 and 08.04.1992 and that learned A.D.J. wrongly shifted the burden of producing Petitioner Nos. 2 and 3 upon Petitioner No. 1.

6. The first argument raised by learned Counsel for the Petitioner is that land in dispute was agricultural land and after the death of original tenure holder i.e. mother of the parties only her sons inherited the property and not her daughters.

As far as this argument is concerned firstly there is nothing on record to show that the land in dispute was entered as agricultural land in revenue records and was situate in an area where U.P.Z.A.L.R. Act was applicable. Secondly, this argument could not be raised where it was sought to be raised i.e. in execution proceedings. The brothers Petitioner No. 1 and Respondent No. 2 should have first objected about the substitution of their sisters (Petitioner Nos. 2 and 3) in the reference which was not done. Probably all the four legal representatives filed combined application for their substitution. Accordingly, after the award it is no more open to assert that daughters have no share.

7. The second point argued is that the earlier deeds dated 6.4.1992 and 8.4.1992 were not legal for want of stamp etc. and subsequent deeds of 1997 executed by original Petitioner Nos. 2 and 3 cancelled the earlier deeds.

8. It is important to note at this juncture that neither any of the sisters (Petitioner Nos. 2 and 3) nor Petitioner No. 1 ever asserted that the deeds of 6.4.1992 and 8.4.1992 had not infact been executed by Petitioner Nos. 2 and 3. Transfer of actionable claim is provided u/s 130 of Transfer of Property Act. The only requirement is that it must be in writing. Neither any particular words are necessary to constitute assignment nor it requires any stamp or registration. It also does not require any consideration. After actionable claim is transferred through writing, it becomes irrevocable. Petitioner Nos. 2 and 3 in their subsequent applications and affidavits of 1997 did not deny execution of the earlier deeds on 6.4.1992 and 8.4.1992.

9. Learned Counsel for the Respondent has cited an authority of the Supreme Court reported in Dhani Ram Gupta and Others Vs. Lala Sri Ram and Another, in which it has been held that under Order 21 Rule 16 Code of CPC decree may be assigned and property in decree passes as intended in the deed of assignment and recognition of transfer by court is not a pre-condition. Paragraphs 3 and 4 of the said authority are reproduced below:

3. Let us examine if the provisions of the Code of CPC justify the submission of the learned Counsel. Section 2(3) defines "decree-holder" as meaning "any person in whose favour a decree has been passed or an order capable of execution has been made". Section 51 provides that the Court may, on the application of the decree-holder order execution of the decree by various methods. Section 146 provides that where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him. Order XXI of the Code of CPC deals with execution of decrees and orders and Order XXI, Rule 2 in particular provides for payment or adjustment out of Court and for the recording of satisfaction of the decree by the Court in whole or in part as the case may be. Order XXI, Rule 16 with which we are primarily concerned is as follows:

16. Where a decree or, if a decree has been passed jointly in favour of two or

more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others." "(Explanation - Omitted)

4. We are unable to read Order XXI, Rule 16 as furnishing any foundation for the basic assumption of the learned Counsel for the Respondent that property in a decree does not pass to the transferee under the assignment until the transfer is recognised by the Court. Property in a decree must pass to the transferee under a deed of assignment when the parties to the deed of assignment intend such property to pass. It does not depend on the Court's

recognition of the transfer. Order XXI, Rule 16 neither expressly nor by implication provides that assignment of a decree does not take effect until recognised by the Court. It is true that while Order XXI, Rule 16 enables a transferee to apply for execution of the decree, the first proviso to the Order XXI, Rule 16 enjoins that notice of such application shall be given to the transferor and the judgment-debtor and that the decree shall not be executed until the Court has heard their objections, if any, to its execution. It is one thing to say that the decree may not be executed by the transferee until the objections of the transferor and the judgment-debtor are heard, it is an altogether different thing to say that the assignment is of no consequence until the objections are heard and decided. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment. If the judgment-debtor has notice of the transfer, he cannot be permitted to defeat the rights of transferee by entering into an adjustment with the transferor. If the judgment-debtor has no notice of the transfer and enters into an adjustment with the transferor before the transferee serves him with notice under Order XXI, Rule 16, the judgment-debtor is protected. This in our view is no more than plain good sense. In *Dwar Buksh Sirkar v. Fatik Jail* (1899) ILR 26 Cal 250 at pp. 253-54 the decree-holder represented to the Court that the judgment-debtor had satisfied the decree by payment and wanted his execution application to be disposed of accordingly. Before satisfaction could be recorded a transferee of the decree from the original decree-holder intervened and claimed that satisfaction could not be recorded as there was a valid transfer of the decree in his favour prior to the alleged payment by the judgment debtor to the original decree-holder. The argument before the High Court was that the assignee could not prevent the recording of the

satisfaction of the decree as he had not filed an execution application and got the assignment in his favour recognised. The High Court of Calcutta observed:

The only provision in the Code referring expressly to the assignment of a decree is contained in Section 232, and that no doubt contemplates a case in which the assignee applies for execution. In such a case the Court may, if it thinks fit, after notice to the decree-holder and the judgment-debtor, allow the decree to be executed by the assignee. If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Code from recognising the transferee as the person to go on with the execution. The recognition of the Court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition which makes him the transferee in law. The omission of the transferee, if it was an omission, to make a formal application for execution for execution, was merely an error of procedure and does not effect the merits of the case..... It is argued for the Respondent that the transferee's title was not complete as express notice of the transfer had not been given to the judgment-debtor. As already observed, the transfer, as between transferor and the transferee, is affected by the written assignment. If the judgment-debtor had no notice of the transfer and being otherwise unaware of it paid the money of the decree-holder, the payment was, of course, a good payment was, of course, a good payment, and he cannot again be held liable to the transferee". We express our agreement with the observations made by the Calcutta High Court.

10. Accordingly, there is no error in the findings of the court below that the deeds of 6.4.1992 and 8.4.1992 completely and irrevocably transferred the shares of Petitioners Nos. 2 and 3 in the decree/award in favour of Respondent No. 2.

11. Writ petition is therefore dismissed.