

(1984) 01 OHC CK 0022

In the Orissa High Court

Case No : Civil Revision No. 135 of 1983

Purushottam Lal Mang(sic)uram

APPELLANT

Vs

Mst. Joro Bai and Others

RESPONDENT

Date of Decision : 02-01-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16, 146, 47
Constitution of India, 1950 — Article 226
Succession Act, 1925 — Section 214

Citation : AIR 1984 Ori 202 : (1984) 1 OLR 282

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : Deepak Misra, R.N. Naik and G. Rath, for the Appellant; S.S. Basu and S.S. Rao, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Behera, J.—This revision has been directed against the order passed by the learned Munsif, Sambalpur, rejecting the objections raised by the petitioner being the judgment-debtor in Execution Case No. 2 of 1975 with regard to the maintainability and continuance of the proceeding against him by the opposite parties for his eviction in pursuance of the order passed in November, 1974, under the Orissa House Rent Control Act initiated by Devidutta Agarwalla. The petitioner had unsuccessfully moved the appellate authority under the Act and had without success moved this Court in O. J. C. No. 644 of 1977 for quashing the order of eviction which was dismissed on December 1, 1977.

2. The petitioner made an application u/s 47 of the Civil P. C. (for short, the "Code") in the aforesaid Execution Case alleging that proper enquiry regarding the insanity of Devidutta under Order 32, Rule 15 of the Code had not been made. This application was rejected by the executing court in April, 1978 and Civil Revision No. 264 of 1978 directed against that order of rejection was dismissed by this Court. The petitioner instituted Title Suit No. 3 of 1979 in the

court of the Munsif, Sambalpur, alleging creation of a new tenancy on the basis of an oral agreement and obtained an interim order of stay of further proceeding in the Execution Case in February, 1979, which was made absolute on April 25, 1979. Against that order, the landlord Devidutta came to this Court in Civil Revision No. 284 of 1979 which was allowed on Mar., 6, 1981 and the order of stay was vacated. The suit instituted by the petitioner was dismissed for default on April 29, 1982. The petitioner raised an objection u/s 47 of the Code in Miscellaneous Case No. 16 of 1981 stating inter alia that the Execution Case was no more maintainable as the land on which the rented house stood had been resumed by the State Government. That case was dismissed on July 4, 1981 and the Civil Revision No. 369 of 1981 directed against that order was withdrawn by the petitioner on September 20, 1982.

3. The landlord Devidutta died on Oct. 20, 1982 and on his death the present opposite parties, being his heirs and legal representatives, made an application u/s 146 of the Code to continue the execution proceeding initiated by Devidutta. This application was resisted by the petitioner on the grounds that (a) an application for substitution was not maintainable and a fresh Execution Case had to be instituted by the legal representatives of the decree-holder in the event of his death; (b) Smt. Sita Dei, one of the legal representatives, had not signed the application and (c) the property for which the execution was levied had been resumed by the State Government and therefore, the opposite parties, having lost their right, if any, could not continue the execution proceeding.

4. After hearing both the sides and on a consideration of the materials placed before him, the learned Munsif allowed the application made by the opposite parties and rejected the objections raised by the petitioner. It is thus that the petitioner has come to this Court in this revision.

5. Mr. Deepak Misra, appearing for the petitioner, has raised the same three grounds and has submitted that the Learned Munsif committed an illegality by allowing the application made by the opposite parties. Mr. S.S. Basu has submitted on behalf of the opposite parties that none of the contentions raised on behalf of the petitioner can prevail and this revision has been directed against the impugned order only to protect the proceedings so that the opposite parties are precluded from evicting the petitioner in due course of law in the execution proceeding.

6. The objection that Smt. Sita Devi, one of the legal representatives, had not signed the application cannot be maintained as she had examined herself and had stated that she had signed the application. The executing court rightly overruled this objection raised by the petitioner.

7. It has been submitted on behalf of the petitioner that the property for which execution was levied had been resumed by the State Government and the opposite parties had lost, their right, if any and could not, therefore, continue the execution proceeding. The dispute before the House Report Controller was in

respect of the house and not the land on which it stood. It has been submitted at the Bar that against the order of resumption, late Devidutta filed O.J.C. No. 903 of 1980 and this Court has stayed the operation of the order of resumption. Thus the order of resumption has not been given effect to. The same objection had been taken by the petitioner in Miscellaneous Case No. 16 of 1983 which was not accepted by the executing court and against that order, the petitioner had filed Civil Revision No. 369 of 1981 which was withdrawn on 20-9-82. Placing reliance on the principles laid down in Somnath Burman Vs. Dr. S.P. Raju and Another, it has been submitted by Mr. Misra that the petitioner has possessory title in respect of the house against the whole world except the true owner (the State) and the opposite parties cannot ask for eviction. The question of resumption by the State Government has been the subject-matter of a writ application and the operation of the order of resumption, has been stayed. For the aforesaid reasons, this objection raised on behalf of the petitioner cannot prevail.

8. There thus remains for consideration the objection with regard to the maintainability and continuance of the execution proceeding by the opposite parties after the death of Devidutta without starting a fresh execution. It is not disputed that the opposite parties are the heirs and legal representatives of the late Devidutta. The question for consideration is as to whether they can be allowed to continue the execution proceeding started by late Devidutta for the eviction of the petitioner,

9. Section 146 of the Code reads:

"Save as otherwise provided by this Code or by any law for the time being in force, 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 21, Rule 16 of the Code provides: "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 of 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 executions. Provided also that, where a decree for the payment of money against two or more persons has been executed against the others.

Explanation--Nothing in this, rule shall affect the provisions of Section 146 and a transferee of rights in the property, which is the subject-matter, of the suit, may apply for execution of the, decree without a separate assignment of the decree as required by this rule."

10. As has been observed by the Supreme Court in *Saila Bala Dassi Vs. Sm. Nirmala Sundari Dassi and Another*, Section 146 has been introduced with the object of facilitating the exercise of rights of persons in whom they come to be vested by devolution and assignment and being a beneficial provision should be construed liberally so as to advance justice and not in a restricted or technical sense. It has been held that the right to prefer an appeal must be held to carry with it the right to continue an appeal which had been preferred by the person under whom the applicant claims and his application to be brought on record as an appellant in an appeal must be held to be maintainable u/s 146. The same view was taken in the case of *Shew Bux Mohata and Others Vs. Bengal Breweries Ltd. and Others*, . The expression "claiming under" is wide enough to cover cases of devolution mentioned in Order 22, Rule 10 of the Code.

11. Section 146 enables the legal representative of a deceased decree-holder to be brought on record to carry on a pending execution proceeding. Section 146 is wider in its amplitude than Order 21; Rule 16 and enables the person who has succeeded to the interest of the decree-holder in whole or in part to execute the decree: (See *Jugalkishore Saraf Vs. Raw Cotton Co. Ltd.*, ; There is nothing in Order 21, Rule 16 which expressly or by necessary implication precludes a person, who claims to be entitled to the benefit of a decree under the decree holder, but does not answer the description of being a transferee of that decree by assignment in writing or by operation of law, from making an application for execution which the person from whom he claims could have made. Order 21, Rule 16 is confined in its application to persons who have succeeded to the interest of the decree holder by assignment in writing or by operation of law. But Section 146 is wide enough to cover persons claiming under the decree-holder, but not falling within the terms of this rule. The application for execution made by them is maintainable u/s 148. This has now been made clear by the Explanation to Order 21, Rule 16 inserted by the Civil P. C. (Amendment) Act, 1976, (No. 104 of 1976) in Section 72 thereof, providing that nothing in Order 21, Rule 16 shall affect the provisions of Section 146 and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.

12. When a decree-holder dies pending an execution case, the legal representatives may be brought on the record to continue the execution proceeding and if it is not necessary for them to make a fresh application for execution. An execution proceeding, unlike a suit, does not abate on the death of the decree-holder. The legal representatives of the deceased decree-holder can be substituted as rights under the decree are transferred by operation of law. (See *AIR 1935 Pat 117 F.A. McNaught v. Mt. Saraswati Thakurain* *AIR 1065 Pat 85 Sukhdeo Bhagat v. Bishwanath Singh* *AIR 1932 Mad 73 (FB) V Annada Prasad Mitra Vs. Sushil Kumar Mandal*, and *AIR 1959 Mys 41 C. Sigamani Mudaliar v. Venkatasami*).

13. While submitting on behalf of the petitioner that opposite parties cannot

continue the execution proceeding u/s 146 of the Code, Mr. Misra has contended that without a succession certificate u/s 214 of the Succession Act the opposite parties cannot be allowed to continue the execution proceeding. But as has rightly been contended by Mr. Basu for the Opposite Parties; (Section 214 of the Succession Act contemplates the recovery through courts of debts from the debtors of the deceased person. The succession certificate is necessary in such cases.) In support of his contention that an execution case can be continued by the heirs and legal representatives of the deceased decree-holder without a succession certificate, Mr. Basu has placed reliance on the principles laid down in Lal Kumari Devi and Others Vs. Fulmati Kuer and Others, , Akula Mabukhan Vs. Rajamma and Others, , Ramanatha Reddy v. K. V. Kuppuswami Mudaliar. The contention raised by Mr. Misra for the petitioner in this regard cannot be upheld.

14. For the reasons aforesaid, the objections raised on behalf of the petitioner cannot prevail and the opposite parties are entitled to continue the execution proceeding. The learned Munsif, on a careful consideration of the objections raised by the petitioner overruled the same. It is not a case where the learned Munsif has exercised jurisdiction not vested in him by law or has failed to exercise his jurisdiction so vested or has acted in the exercise of his jurisdiction illegally or with material irregularity calling for interference by this Court in revision.

15. The revision fails and is dismissed, leaving the parties, in the circumstances of the case, to bear their own costs of this proceeding.