

(2015) 12 RAJ CK 0027

In the Rajasthan High Court

Case No : Civil Execution Second Appeal No. 27/1994

Pushkarna Brahmin Bhimji Ka Mohalla Vikas Samiti

APPELLANT

Vs

Damodar Das and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, 100

Citation : (2015) 12 RAJ CK 0027

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Chetan Prakash Soni, for the Appellant; K.C. Samdariya and K.N. Vyas, for the Respondent

Judgement

Vineet Kothari, J.—The present Execution Second Appeal under Section 100 of the Code of Civil Procedure has been filed by the appellant-decree-holder-Pushkarna Brahmin Bhimji Ka Mohalla Vikas Samiti against the judgment and decree dated 28.08.1993 passed by the learned Additional District Judge No. 1, Jodhpur in Civil Appeal Decree No. 46/1993 "Jabar Mal S/o. Jaidev Purohit Potedar v. Damodardas S/o. Hansraj & Ors." by which, the appeal of the decree-holder, filed against the judgment and decree dated 09.12.1978 "Jabar Mal (Decree-holder) v. Damodardas, Udai Kishan (judgment-debtor)" in which, the application filed by the decree-holder Jabar Mal under Order 21 Rule 97 CPC on raising of objections by the objectors, the application has also been dismissed.

2. The plaintiff-decree-holder-Pushkarna Brahmin Bhimji Ka Mohalla Vikas Samiti through its President Jeth Mal Vyas S/o. Mohan Lal Vyas has filed the present second appeal in this Court on 03.01.1994 aggrieved by the refusal of the two Courts below to execute the decree for eviction under Rent Control Act, 1950 of the respondents-objectors from the suit property, a residential house, situated in Bhimji Ka Mohalla, Jodhpur which was owned by the plaintiff-Trust.

3. The reasons assigned by the two Courts for refusing to execute the decree on the basis of the objections of the objectors, who are son and brother of the

judgment-debtor, namely, Moolraj, being son of Damodardas and Asharam, also being son of the Damodardas. The reasons assigned by the learned Trial Court of Munsif & Judicial Magistrate, First Class, Jodhpur City, Jodhpur in the impugned order dated 09.12.1978 are quoted herein below for ready reference:--

4. Being aggrieved by the order dated 09.12.1978, the appellant-decree-holder has filed the appeal, namely, Civil Appeal No. 46/1993 "Jabar Mal S/o. Jaidev Purohit Potedar v. Damodardas S/o. Hansraj & Ors." which also came to be dismissed by the learned Additional District Judge No. 1, Jodhpur by the impugned order dated 28.08.1993. The reasons assigned by the learned First Appellate Court are also quoted herein below for ready reference:--

5. While admitting the present second appeal on 18.02.1994, a co-ordinate Bench of this Court has framed the following substantial questions of law which are quoted herein below for ready reference:--

"(1) Whether in view of the admission of the objector respondents No. 2 and 3 that the property, in respect of which execution has been filed, belong to Pushkarna Samaj, representing whom decree for eviction was obtained by Jabar Mal against the father and brother of the objectors, the finding that Mool Raj and Asha Ram were independently in possession of the suit premises, is legally sustainable;

(2) Whether without proving that the objectors have come in the possession independent of tenancy exceeding between the decree holder and judgment debtors who are father and brother of the objectors, and in whose favour the court found the existence of tenancy at any point of time are entitled to resist the execution of the decree."

6. The learned counsel, Mr. Chetan Prakash Soni, appearing for the appellant-decree-holder submitted that the objections raised by the respondents were untenable, who claimed their independent possession over the suit property, a residential house, right from the year 1958 whereas, the present suit (No. 645/1974) for eviction has been filed by the Trust and the ex-parte decree dated 29.07.1976 has been granted by the learned Trial Court against the father-Damodardas S/o. Hansraj, and first son-Udai Kishan, on the ground of default in payment of rent and the aforesaid decree has become final. The other sons, namely, Mool Raj and Asha Ram, of the judgment-debtor-Damodardas, who sought their impleadment in the said suit but that application was rejected by the learned Trial Court during the trial of the suit. Aggrieved by the rejection of their impleadment application, the objectors had filed a revision petition before this Court, namely, S.B. Civil Revision Petition No. 393/1976 "Mool Raj & Anr. v. Jabar Mal & Ors." which was dismissed by the learned Single Judge of this Court on 26.10.1976 with the following observations:--

"S.B. Civil Revision Petition No. 393 of 1976. Mool Raj & Anr. v. Jabar Mal & Ors.
26.10.1976

Hon"ble D.P. Gupta J.

Mr. Kewal Chand for the petitioner.

Heard learned counsel.

The grievance of the learned counsel is that while rejecting the application of the applicant for being impleaded as a party defendant in the suit, the learned trial Court has made certain observations which may affect the rights of the applicant in any subsequent proceedings.

So far as the decision of the trial Court is concerned, that the rights of the applicant would not be affected by whatever decree may be passed in the present suit, there can hardly be any dispute. However, it is made clear that the observations made by the trial Court in respect of the rights of the applicant relating to the property in dispute shall not in any manner affect the rights of the applicant in any subsequent proceedings.

With these observations, the revision application is dismissed.

sd/- D.P. Gupta, J."

The learned counsel, Mr. Chetan Prakash Soni, therefore, submitted that in the aforesaid circumstances, the decree in question deserves to be executed qua the objectors also, who are close relatives of the original judgment-debtors and the plea taken by the objectors that they are in independent possession from 1958 and have adverse possession qua their own father and brother over the suit property, deserves to be rejected.

7. On the other hand, the learned counsels, Mr. Kewal Chand Samdariya and Mr. Karuna Nidhi Vyas, appearing for the respondents-objectors, while relying on the decisions in the cases of Bhoorchand v. Kalyanchand reported in 1961 RLW 503 and Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd. and Others, urged that in the first case in hand, the decree in question was passed against the sons and rejected against the grandsons, therefore, it was held that the decree could not be executed against the grandsons, therefore, the learned counsels submitted that the decree in the present case could be executed qua the objectors because it will adversely affect the rights of the objectors, as they have adverse and independent possession over the suit property even before instituting the suit against the defendants and execution of the rent note in favour of the Trust. The learned counsels submitted that the rent note, on the basis of which, the decree in question has been granted ex-parte, was collusively executed between the plaintiff-Trust (landlord) and defendants-father-Damodardas and son-Udai Kishan, however, the two other sons of judgment-debtor namely, Mool Raj and Asha Ram, have their adverse and independent possession over the suit property since the year 1958. The learned counsels, therefore, submitted that the present second appeal filed on behalf of the appellant-Trust deserves to be dismissed.

8. Having heard the learned counsels for the parties and upon perusal of the record of the case, this Court is satisfied that the present second appeal filed on behalf of the appellant-Pushkarna Brahmin Bhimji Ka Mohalla Vikas Samiti deserves to be allowed and the substantial questions of law, as framed and quoted above, deserve to be answered in favour of the appellant-decree-holder and against the respondents-objectors. There is no evidence produced before the learned two Courts below that the respondents-objectors were in independent possession over the suit property, a residential house, being independent of their father and elder brother (judgment debtors) and that the eviction suit was a collusive suit. The rent note in question has been executed between the decree-holder-Jabar Mal, being the President of Pushkarna Brahmin Bhimji Ka Mohalla Vikas Samiti and the tenants-Damodardas and Udai Kishan. It is noticed that no proof of independent tenancy in favour of the objectors namely, Mool Raj and Asha Ram, has been produced before the learned two Courts below nor any evidence they being not in good terms with their father-Damodardas has been led and, therefore, this Court is of the opinion that on the basis of a very weak and false plea of "adverse possession" against their own father and elder brother, the execution of the eviction decree which has become final, cannot be denied qua the present objectors also. The plea taken by the respondents/objectors cannot be believed that they have independent possession over the suit property being independent from their father and elder brother, therefore, in the opinion of this Court, the said plea is per se false and untenable and has been raised just to defeat the decree. The observations made by the learned Single Judge of this Court in the order dated 26.10.1976 cannot enure to the benefits of the respondents/objectors, once it is proved that the original judgment-debtors namely, Damodardas (father) and Udai Kishan (elder brother), are very close relatives of the objectors, namely, Mool Raj and Asha Ram and are not daggers drawn against each other. In view of the aforesaid circumstances, the eviction decree dated 29.07.1976 deserves to be executed against all the respondents/objectors and the present second appeal of the plaintiff-appellant deserves to be allowed, while answering the aforesaid substantial questions of law in favour of the appellant-Trust and against the respondents. 9. Accordingly and in view of the above, the present second appeal filed on behalf of the appellant-Trust-Pushkarna Brahmin Bhimji Ka Mohalla Vikas Samiti, Jodhpur stands allowed and the substantial questions of law, framed and quoted herein above, are answered in favour of the appellant-Trust and against the respondents. In the circumstances, a cost of Rs. 10,000/- (Rupees Ten Thousand only) is imposed upon the respondents to be paid to the appellant-Trust. No costs. A copy of this order be sent to the learned Courts below and to the parties concerned forthwith. 10. However, in the circumstances of the case, it is directed that the defendants-tenants shall hand over the peaceful and vacant possession of the suit shop to the appellant-plaintiff within Six Months on or before 30.06.2016 and shall pay mesne profit @ Rs. 2,500/- per month (Rupees Two thousand only) commencing from the month of December, 2015 and will further continue to pay the mesne profit each month by 15th day of the next succeeding month or in advance to the

appellant/plaintiff also and in case there is any default in payment of mesne profit, the period of Six Months for eviction shall stand reduced and the decree of eviction would become executable forthwith. The defendants/tenants shall also clear all the arrears of rent and mesne profit and pay the same to the appellant/plaintiff within three months from today, otherwise the same will bear interest @9% per annum. The defendants/tenants shall also not sub-let, assign or part with the possession of the suit shop or any part thereof in favour of any one else and would not create any third party interest in the same during the aforesaid period and if it is so done, the same would be treated as void. The defendants-tenants shall furnish a written undertaking incorporating the aforesaid conditions in the trial court within one month and one copy thereof along with affidavit, in this Court. It is made clear that if the peaceful and vacant possession of the suit premises is not handed over to the appellant-plaintiff within a period of Six Months from today or mesne profits are not paid as directed above, besides the expeditious execution of the decree in normal course, the appellant-plaintiff shall also be entitled to invoke the contempt jurisdiction of this Court.