

(2011) 03 KAR CK 0376

In the Karnataka High Court

Case No : Civil Revision Petition No. 478 of 2007

Rajesab Buddesab Hubballi and Another

APPELLANT

Vs

M/s. Khaji Home Industries and Others

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Citation : (2013) 1 AKR 423

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Dinesh M. Kulkarni, for the Appellant; Ravi S. Hegde and S.S. Khateeb, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—A person, who gets into the property as tenant cannot assume more rights than the landlord and cannot get into competition with a decree holder to contend that the decree holder, whether in the family partition or otherwise, has to yield a particular property, in this case a non-residential premises, of which he was admittedly a tenant under the petitioners-decree holders etc. No tenant, who has suffered a decree for eviction, can put forth a claim in the nature of a competing title to the property in execution proceedings, whether or not such is the possibility elsewhere, and against persons who claim under a decree holder or who can claim an interest in the decree itself.

2. Such is the objections filed by the respondents herein, who are judgment debtors having suffered an eviction order on 15-11-1985 in HRC No. 37 of 1983 and a further revision in RR No. 13 of 1986 having been dismissed on 15-2-1990 by the revisional Court and the eviction order having become final and by taking up such objections to resist the decree in Ex Case No. 27 of 2002, on the file of II Addsl. Civil Judge (Jr. Dn.) & JMFC III Court, Hubli.

3. It is because of the learned judge of the executing Court has permitted such objections to be raised on behalf of the judgment debtors and claiming that it is

supported by an application filed by a non-party to the proceedings, the sister who had claimed that the subject property had fallen to her share in some other proceedings between herself and decree holders, the executing Court having dismissed the execution case, the present revision petition by the decree holders.

4. I have heard Sri Dinesh M. Kulkarni, learned counsel for the petitioners and Sri Ravi S. Hegde, learned counsel for respondents 1 to 5.

5. Sri Kulkarni, learned counsel for the petitioners points out that at the instance of third parties, the executing Court could not have gone into the question of validity or the effectiveness of the decree and moreover an application filed by a person assuming to be sister, that was an independent proceeding and therefore could not make any difference to the execution proceedings.

6. On the other hand, the submission of Sri Ravi S. Hegde, learned counsel for the respondents 1 to 5, is that when the decree holders have lost interest in the subject property, with the said property having fallen to the share of a co-sharer, there was no way of the decree being executed; that the learned judge of the executing Court has rightly upheld this position and dismissed the execution proceedings and there is no need to interfere in this revision petition.

7. I have examined the submission made at the Bar and perused the impugned order.

8. Strangely, the learned Judge of the executing Court while has dismissed the application in IA-III filed by a person, sister of the decree holder, who had claimed that in some arrangement or Court proceedings, the subject property was fallen to her share and therefore she has wanted to come on record as co-competitioner in the execution proceeding and which was negatived, but allowed the objections filed by the present respondents-judgment debtors, who, in fact, raised objections precisely on the basis of the applicant having acquired interest in the property and therefore such an applicant having recognized his tenancy and receiving rent is entitled to defend his position.

9. What factual arrangements the parties achieved cannot be a determinative factor, if there are proceedings that had taken place in accordance with law has resulted in some judgment and decree and has attained finality.

10. A judgment debtor like the respondents can resist a decree only if he/she is able to show that the decree had been set aside or annulled and no more operates in the eye of law and therefore cannot be executed.

11. No such effort having been made before the executing Court and therefore there was no other way for the learned judge of the executing Court, but to dismiss the execution petition. Therefore, the revision petition is allowed and the impugned order is set aside. The executing Court is hereby directed to go ahead in the matter in accordance with law and take to its logical conclusion for the purpose of executing the eviction order as originally passed in HRC No. 37 of 1983 and affirmed in RR No. 13 of 1986.