

(1982) 07 GAU CK 0007
In the Gauhati High Court
Case No : Civil Revn.No. 6 of 1961

Rakhal Chandra Ghosh son of Late Kamini Kumar Ghosh	APPELLANT
Vs	
Jogendra Kumar Bhowmik son of Late Mahananda Bhowmik of Kamalpur Town, Tripura	RESPONDENT

Date of Decision : 31-07-1982

Acts Referred:

Civil Procedure Code, 1908 — Order 21 Rule 103, 115
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103, 115

Citation : AIR 1963 Tripura 54

Hon'ble Judges : T.N.R.Tirumalpad, J

Bench : Single Bench

Advocate : R.L.Chakraborty, J.K.Roy, Advocates appearing for Parties

Judgement

1. The petitioners, who are the plaintiffs in T. S. No. 21 of 1960 in the Court of the Munsiff, Kamalpur, have filed this revision petition against the order of the Munsiff, dated 611961, by which he dismissed their application under "Section 151, C. P. C. to stay the execution of the decree obtained by the respondent in Rent Suit No. 14 of 1956 pending the disposal of their Suit T. S. No. 21 of 1960.

(2) The respondent obtained a decree in the said Rent Suit for ejectment of his tenant, one Nagarbashi Deb, from jote No. 28 of mouja Noagoan. When he went to take possession in execution of the decree, the present petitioners, who are third parties, resisted delivery of possession. On the application of the respondent under Order 21, Rule 97, C. P. C. for removing the obstruction, an enquiry was held. The petitioners' case in the said enquiry was that the land which they were in possession of was jote No. 27 and not jote No. 28. In the enquiry the learned Munsiff appointed a Commissioner and his report was that the land in question was part of jote No. 28. On the strength of the said report, the Munsiff ordered removal of obstruction of the petitioners and directed delivery under Order 21, Rule 98, C. P. C. Then the petitioners filed civil revision No. 2 of 1960 before this Court. But the said revision was dismissed on the

ground that the remedy for the petitioners was by way of a regular suit under Order 21, Rule 103.

Then the petitioners came forward with the present suit for a declaration of their right to present possession of the land and for setting aside the order of the Munsiff. In the suit itself they requested for stay of proceedings in execution case No. 11 of 1959 till disposal of the suit and also for restoration of possession in case the respondent dispossessed them through Court by way of execution. After filing the suit, they put in a separate petition under Section 151, C. P. C. for stay of execution. The learned Munsiff was of opinion that Section 151, C. P. C. will not apply and he relied on the decision *Narayanan Chettyar v. Ma Saw Hla*, AIR 1941 Rang 60. He was also of opinion that the matter having been fully investigated in the proceeding under Order 21, Rule 97, C. P. C. and it having been found that the decretal land was not covered by jote No. 27 as alleged by the petitioners, there was no reason to deprive the respondent of the relief he had obtained after a protracted litigation by an order of stay.

(3) Now in revision, it was argued that Section 151, C. P. C. is the only section which could be applied in the present case, that the petitioners had no other remedy, that the order passed by the Munsiff under Order 21, Rule 98 is subject to the result of the suit brought by the petitioners as provided under Order 21, Rule 103, C. P. C., that as the petitioners were in possession in their own right, justice required that their possession should not be disturbed pending the suit and that if their possession is disturbed, complications are likely to arise if they succeeded in the suit. For the respondent, the order of the Munsiff was supported and it was stressed that the petitioners not being party to the decree, the execution should not be stayed under Section 151, C. P. C., that the respondent has been trying to get relief for 6 years and he has been thwarted successfully till now and that the same tactics should not be allowed to be adopted any further and that if the petitioners succeed in the suit, they can always get back possession by way of restitution.

(4) I am unable to agree with the learned Munsiff that Section 151, C. P. C. will not apply to the case. The decision AIR 1941 Rang 60, dealt with a quite different set of facts. That was not a case in which a suit was filed under Order 21, Rule 103 or Order 21, Rule 63. That was a case where a decree was obtained against an estate, represented by certain persons and the respondent therein filed a suit stating that the decree was obtained by fraud and that she really represented the estate and her suit was for a declaration of title under the Specific Relief Act and not under Order 21, Rule 63. What was decided therein was not that Section 151, C. P. C. will not apply for stay of execution but that it was not necessary in the ends of justice in that particular case to stay execution under that section as the respondent's right, title and interest therein cannot be affected by the execution and by any sale in execution. That is not the case before us at all. Here the respondent filed an application under Order 21, Rule 97, for removing the obstruction caused by the petitioners and what the Court

had really to decide in such an application was whether the resistance or obstruction was occasioned by the judgmentdebtor or by some other persons at his instigation.

The petitioners' case was that the property they were in possession of was jote No. 27, while the decree was obtained in respect of jote No. 28. The question was, therefore, whether the property in the possession of the petitioners was jote No. 27 or 28. The learned Munsiff after the summary enquiry held under Order 21, Rule 98 that it was jote No. 28 and from this, he was of opinion that the petitioners were causing the "Obstruction at the instigation of the judgmentdebtor. Such an order, however is. subject to the result of the suit now filed by the petitioners to establish their right to the present possession of the property. When such a suit is pending, it is necessary in the interests of justice that the execution should be stayed so far as this property is concerned. When the order of the Munsiff under Order 21, Rule 98 is clearly subject to the result of the suit and the suit has been filed and what has to be decided in the suit is the question, of title which has really to be investigated in the suit, it is not proper that the decree should be allowed to be executed and the petitioners dispossessed of the property. The proper thing to do in such a case is to stay the execution and to expedite the hearing of the suit itself. The learned Munsiff was thus wrong in "stating that Section 151, C. P.C. will not apply and he failed to exercise his judicial discretion properly and hence, this Court has to interfere in this revision.

(5) For the respondent the decision *Hakimbu Bai v. Dsyabhai Rugnath*, AIR 1939 Bom 508 was relied on and it was argued that if the petitioners succeeded in the suit, the order for the removal of the petitioners' obstruction can be set aside and the status quo as on the date of that order can be rescored and that therefore it was not necessary to stay the execution. No doubt, if no stay is granted and the respondent dispossesses the petitioners, restoration can be ordered. But that is no reason why the execution should not be stayed at all and why pending the decision in the title suit, the petitioners should be allowed to be dispossessed.

(6) The revision petition is, therefore, allowed and the order of the Munsiff refusing to stay the execution is set aside and the execution is directed to be stayed until the disposal of the suit. The Munsiff will expedite the hearing of the suit and see that the suit is disposed of as early as possible. Parties to bear their own costs in this application.

Revision allowed.