
(2006) 04 OHC CK 0061
In the Orissa High Court
Case No : FAO No. 422 of 2003

Rama Krushna Das Mohapatra	Vs	APPELLANT
Indian Tea Provisions Limited and Another		RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 97

Citation : (2006) 1 OLR 534 Supp

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : R.K. Mohanty, D.R. Mohanty, P.K. Rath, S.N. Biswal, A.P. Bose and P.K. Satapathy, for the Appellant; Ashok Mohanty, Jeetendra Sahu, H.K. Tripathy, M.K. Rout, S.P. Nayak, J.P. Patra and J.K. Samantasinghar, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This appeal is directed against the order dated 3.9.2003 passed by the Additional Civil Judge (Senior Division), Puri, in C.M.A. No. 25/2003, rejecting the application filed by the present Appellant under Order 21, Rule 97 of the Code of Civil Procedure.

2. The statement of facts, as detailed in the appeal memo, tends to reveal that Respondent No. 1 as Plaintiff filed Title Suit No. 16/290 of 97/92 in the Court of the Additional Civil Judge (Senior Division), Puri, for a decree of eviction, arrear rent, mesne profit, interest and cost. Present Respondent No. 2 was the Defendant in the aforesaid Title Suit. The suit in question was decreed by the trial Court by its ex parte judgment dated 12.2.2000 and consequent upon the said ex parte judgment, a decree was also passed for eviction. The Plaintiff Respondent No. 1 filed Execution Case No. 3 of 2002 for executing the said decree. While the said decree was pending for execution, the Appellant filed the application under Order 21, Rule 97 Code of Civil Procedure, which was registered as C.M.A. No. 25/2003. The case of the present Appellant in the aforesaid application is that the Appellant had entered into an agreement with

Respondent No. 2, "Hotel Repose" in the presence, participation and with the consent of Respondent No. 1 to run the aforesaid Hotel for a period of 21 years commencing from 4.8.1987 with a condition that if Birendra Mohan Sarkar, who is the Managing Director of Hotel Repose Pvt. Ltd., overstays in the said premises, it would be open to the Appellant to enter into the said premises and take possession of the said property. As said Birendra Mohan Sarkar overstayed and did not handover the management to the Appellant as per the agreement, the Appellant entered into the management and took possession of the said Hotel business since 15.3.2001 and he was not aware of any suit between Respondent Nos. 1 and 2 and the decree passed thereon. Only when he was threatened with dispossession, this application under Order 21, Rule 97 CPC was filed.

3. Mr. Ramakanta Mohanty, learned Counsel for the Appellant, draws my attention to the agreement entered into between the parties relying upon which the claim of the Appellant is that he had entered into the said premises and he is in possession of the same, a photo-copy of which is produced before me indicates that an agreement was entered into between Birendra Mohan Sarkar, the Managing Director of M/s. Hotel Repose Pvt. Ltd., along with the present Appellant in which one Paresh Chandra Chatterjee was also a signatory as a witness. Paresh Chandra Chatterjee is none other than, as stated by the learned Counsel for the Respondents, the Director of M/s. Indian Tea Provisions Ltd. Respondent No. 1 who now says that the agreement on which the Appellant relies is a disputed one. I am not examining the validity of the said agreement or otherwise. The moot question to be decided in the appeal is whether the application under Order 21, Rule 97 of the CPC is maintainable at the behest of the present Appellant, who claims to be a partner of the judgment debtor, i.e., M/s. Hotel Repose Pvt. Ltd.

4. It is not out of place to mention here that Respondent No. 2, who was the Defendant in Court below, is a Private Limited Company and the concept of partnership absolutely does not arise in case of a Private Limited Company registered under the Companies Act, 1956. For that reason, in the order dated 19.7.2004, I, inter alia, directed the learned Counsel for the Appellant to produce the documents indicating the decision of the Board of Directors of M/s. Hotel Repose and M/s. Indian Tea Provisions authorizing Paresh Chandra Chatterjee and Birendra Mohan Sarkar to represent the respective Companies and to put their signatures on the Memorandum of Agreement dated 5th November, 1987 on behalf of the Company authorizing the present Appellant with certain rights to deal with the affairs of the said Company in terms of the said agreement.

5. Though Mr. Ashok Mohanty, learned Counsel for Respondent No. 1, filed Memorandum of Association of M/s. Hotel Repose Pvt. Ltd., as regards the documents directed to be filed by the Appellant, Mr. R.K. Mohanty submits that he is not able to file any document as no such document is available with him.

6. Perused the order impugned and the provision of Order 21, Rule 97, CPC

which provides that where the holder of a decree for the possession of immovable property or the purchaser or any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction and this question shall be dealt with in Order 21, Rule 101 of the Code of Civil Procedure. As it appears, the Appellant has no independent right on the basis of which a valid resistance can be made to the decree which is binding on Respondent No. 2 as the present Appellant claims his right as a partner of Respondent No. 2, i.e., M/s. Hotel Repose Pvt. Ltd. i.e., judgment debtor.

7. In my considered opinion, the application filed by the Appellant before the trial Court under Order 21, Rule 97 of the CPC is not maintainable. There is also no infirmity in the order dated 3.9.2003 passed by the Addl. Civil Judge (Senior Division), Puri, in C.M.A. No. 25 of 2003, as the Appellant is claiming the said property as a partner of the judgment debtor.

The FAO is accordingly dismissed.