

(1985) 12 MP CK 0057
In the Madhya Pradesh High Court
Case No : C.R.A. No. 590 of 1977

Ramkishan Garg

APPELLANT

Vs

Mattulal and another

RESPONDENT

Date of Decision : 17-12-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1988) MPLJ 97

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : K.L. Mangal, for the Appellant; B.S. Agarwal, for the Respondent

Judgement

Dr. T.N. Singh, J.

Shri B.S. Agarwal has drawn my attention to the order passed in this matter on 27-9-1964 to submit that though he represented the deceased non-petitioner, Mattulal, the legal representatives of the deceased not having been brought on record till now, the petition may not be heard. However, when I told him that I am ordering just now the legal representatives to be impleaded he submitted that he may be allowed to file memo of appearance on behalf of the legal representatives of the deceased, Mattulal, during the course of the day. The prayer is allowed, and indeed, as alluded, substitution of Mattulal by his legal representatives as prayed by I. A. No. 3690/84 also stands allowed. Hearing on merits taken up. Counsel heard.

A preliminary objection is taken by Shri Agarwal to the maintainability of the revision petition submitting that the impugned order passed on 3-5-1971 having been rendered after the amendment, there was a right of appeal available to the petitioner in virtue of provisions of Order 21 Rule 103 Civil Procedure Code. But the moot question is, whether the impugned order can be said to be an order passed under Order 21 Rule 103 Civil Procedure Code. I am definitely of the view, for reasons to follow, that it was not; and I have no hesitation, therefore,

to over-rule the objection.

The admitted position in the case is that the impugned order was rendered on 3-5-1977 on an application being filed by the decree-holder, the instant petitioner, on 8-11-1976, under the provisions of Order 21 Rule 35 read with Section 151 Civil Procedure Code. The case has a long history but it is not necessary for me to travel the whole distance to reveal the pleasant as also unpleasant facts which are revealed in execution proceedings when parties fight to break heads in order to secure the possession decreed because, paradoxically, of legal process taking its effect. I go back only to 1972.

It is the admitted position that the decree-holder, Ratabdevi, sought to execute a decree obtained by her against one Jagat Kishore around 1971, in a suit instituted in the year 1968. Unfortunately, she could not obtain possession as some body else, other than Jagat Kishore, was in possession of the suit premises. On 13-5-1972 the Nazir submitted report in the execution proceedings of his failure to execute the writ for delivery of possession and surprisingly, though the decree holder did not take any further steps, one Mattulal sprang up from nowhere and filed an objection on 10-7-1972 to the decree be executed against him, claiming to be in possession of the suit house. To this application reply was filed on 24-7-1972 by the instant petitioner and though many things happened, to those I need not refer. However, eventually, on 14-9-1976, an order was passed in the execution proceedings purporting to dispose finally not the objection, but the decree-holder's reply dated 24-7-1972. There lies the rub. The whole thing was bungled and gross injustice ensued therefrom. So much so that the Court recorded a finding on which Shri Agarwal leaned heavily in this case. The categorical finding, dismissing the "reply" on the ground of limitation, is that execution cannot continue against Mattulal. So, fortified by this finding and encouraged by law, which Shri Agarwal submits supports him, Mattulal is now fighting tooth and nail. But, I have no hesitation to say instantly, straight-way, that the decision rendered on 14-9-1976 was not only an illegal decision; it was a nullity. It has neither the backing of law nor of jurisdiction.

How could the Court treat the reply filed by the decree-holder to Mattulal's objection to be an application under Rule 97 of Order 21 of the CPC belies my comprehension. If the decree-holder chose to allow matters to rest after Nazir's report, the Court could not put into her mind something and also in her hands something as if to destroy her own case. She did nothing and yet she is made to do something and say many things. This is perversion of justice. In the impugned order, at para 12, the Executing Court referred and relied on the order passed earlier by which petitioner's earlier application under Order 21 Rule 35 CPC was rejected. This indeed was Mattulal's contention, which is projected in para 4 of the judgment and it was upheld. I have no hesitation to say that it was wrongly upheld because repeated prayers for possession under Order 21 Rule 35 CPC are not barred. Indeed repeated attempts to remove; with the intervention of the Court, any person bound by the decree who refuses to vacate the

property, is not barred. The process of Rule 97 of Order 21 is evidently an enabling provision and the decree-holder is not bound to complain "resistance and obstruction" to the Court. Sub-section (2) makes this position clear. Indeed, this also appears clear from Rule 101 of Order 21 which indicates the ""questions" determinable in case of an application made under Rule 97 or Rule 99. The provisions of Rules 97 to 101, did not oust the Executing Court's jurisdiction to deal with an application made under Rule 35 of Order 21.

Shri Mangal, appearing for the petitioner/decreed-holder has drawn my attention to a Full Bench decision in Smt. Usha Jain and Others Vs. Manmohan Bajaj and Others, , wherein it has been held that where an application filed by decree-holder under Rule 35 of Order 21 does not require the question of title or possession of the third party to be determined; the remedy of the third party was to file a suit for declaration of his title and therein making prayer for temporary injunction. That apart, it has also been held Rule 97, Order 21 CPC did not obligate a decree-holder to come up before the Court in the event of objection being caused to him in the pending execution case. The decision supports fully the view I have taken. Because the decree-holder did not complain "any resistance or obstruction" by Mattulal the Court wrongly, where jurisdiction changed the "reply" of the decree-holder into an application under Rule 97, Order 21. Nothing more need be said on any aspect of the case.

For the foregoing reasons, I have no hesitation to hold that the impugned order is not sustainable in law in any manner and it is accordingly hereby quashed. There shall be no order as to costs despite the fact that for last several years for several different acts and in several manners and on several dates, cause of justice has suffered. Because, the blame has to be shared mainly by the system.