
(1975) 04 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 337 of 1974

R.L. Mitra

APPELLANT

Vs

Smt. Minoti Mazumdar and Another

RESPONDENT

Date of Decision : 30-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 100, Order 21 Rule 100(1)

Citation : AIR 1975 All 424 : (1975) AWC 382

Hon'ble Judges : G.C. Mathur, J;C.D. Parekh, J

Bench : Division Bench

Advocate : Janardhan Sahai, for the Appellant; K.B. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Mathur, J.—Respondent No. 1, Srimati Minoti Mazumdar, who is the owner of house No. 15-A, Stratchy Road, Allahabad, obtained a decree for the ejectment of one Raghubir Singh from a portion of this house. She put the decree in execution. The appellant R.L. Mitra who is the owner of house No. 15, filed two sets of objections purporting to be under Order XXI, Rule 97/99 and u/s 47 of the Code of Civil Procedure. These were dismissed by the executing court. Thereafter the decree-holder obtained possession by the ejectment of Raghubir Singh. Thereupon R.L. Mitra filed another objection under Order XXI, Rule 100 of the CPC alleging that there had been excessive execution and that the decree-holder had obtained possession not only over a portion of house No. 15-A but also over a portion of house No. 15 of which he was the owner. It was prayed that R.L. Mitra be put back into possession over the property from which he had been dispossessed.

2. The executing court dismissed, the objection on the ground that similar objections filed by him earlier had already been rejected. The executing court observed that R.L. Mitra had also filed a regular suit for cancellation of the decree obtained by Srimati Minoti Mazumdar. Against the dismissal of his application. R.L. Mitra filed a revision before the District Judge. The Additional

District Judge who heard the revision, allowed the same holding that the earlier applications of R.L. Mitra were misconceived and that the orders passed thereon did not bar the present application under Order XXI, Rule 100 of the Code of Civil Procedure. The Additional District Judge directed the executing court to consider the application of R.L. Mitra on merits.

3. Against the order of the Additional District Judge, Srimati Minoti Mazumdar filed a writ petition in this Court. The learned Single Judge held that the application filed by R.L. Mitra was not maintainable as it was not covered by the provisions of Order XXI, Rule 100 of the Code of Civil Procedure. He accordingly allowed the writ petition, quashed the order of the Additional District Judge and restored that of the executing court. Against the judgment of the learned Single Judge, R.L. Mitra has filed this special appeal.

4. We have to see whether the application of R.L. Mitra under Order XXI, Rule 100 of the CPC was maintainable or not. Order XXI, Rule 100 is in these terms:--

"100. Dispossession by decree-holder or purchaser.

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession;

(2) The court shall fix a date for investigating the matter and shall summon the party against whom the application is made to appear and answer the same."

The learned Single Judge has held that the expression "a decree for the possession of such property" in the first part of Sub-rule (1) means a decree for the immovable property from which any person other than the judgment-debtor is dispossessed. In other words, he has held that the rule applies only to dispossession from immovable property which is the subject-matter of the decree. Since the dispossession complained of was not from the immovable property in respect of which the decree had been passed, the learned Single Judge held that the application was not maintainable under Order XXI, Rule 100 of the Code of Civil Procedure. We are in agreement with, the view taken by the learned Single Judge. In Kanagasabhai Pathar Vs. Poornathammal, the Madras High Court held that the remedy under Order XXI, Rule 100 of the CPC was not available in respect of immovable property not covered by the decree. A similar view was taken by the Assam High Court in Bholanath v. Banarsi Lal AIR 1961 GAU 79. We are unable to accept the contention of learned counsel for the appellant that the expression "decree for possession of such property" refers to a decree for the possession of any immovable property. The language of Sub-rule (1) of Rule 100 is clear and a plain reading thereof shows that the expression "such property" refers to the immovable property from which the person making the application has been dispossessed. That being so, the application filed by the appellant was not maintainable under Order XXI, Rule 100 of the Code of Civil

Procedure.

5. The view taken by the learned Single Judge is correct. The appeal is accordingly dismissed with costs.