(2013) 08 P&H CK 0943

In the Punjab And Haryana At Chandigarh

Case No : C.R. No. 3480 of 2003 and COCP No. 234 of 2008

Sadhu Ram (Since Deceased) Through LRs. and Others APPELLANT

Vs

Ramesh Rani and Others RESPONDENT

Date of Decision : 02-08-2013

Acts Referred:

Citation : (2013) 172 PLR 491

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Dhirinder Chopra, for the Appellant; R.K. Gupta, for the Respondent

Judgement

K. Kannan, J.—The contempt petition is not pressed by the petitioner. It is dismissed as such. The civil revision is against the order of dismissal of the execution petition for delivery of property. There had been a decree for ejectment passed in favour of the petitioner on 13.08.1981. The defendant appears to have preferred an appeal which was dismissed on 15.01.1982 confirming the decree of ejectment. The execution petition has been levied by the petitioner on 24.03.1982 after the disposal of the case in appeal. During the pendency of the petition, there was a suit instituted by a third party arraying the decree holder as well as the judgment debtor as parties in the suit and sought for a restraint disturbing his possession. The Court had passed an order of status quo regarding the property on 07.04.1983 and this continued till the suit was ultimately dismissed on 13.08.1994. It appears that in the meanwhile the execution petition itself was dismissed on 20.12.1983 for default for non payment of process fee by the decree holder.

2. After dismissal of the third party suit, there had been yet another attempt by the judgment debtor''s wife to file a suit for an injunction in relation to the same property on 22.09.1994. It appears that the suit was dismissed and appeal filed against it was also dismissed. The execution petition was filed at the second time on 03.10.1996.

3. The execution was resisted by the representatives of the judgment debtor contending that their suit was decreed on 30.01.1981 itself and the time began to run from the said date when there had been no stay of operation of the decree in any higher forum. The petition filed on 03.10.1996 that was beyond a period of 12 years from the date when the decree was passed was resisted to be barred by limitation as per Article 136 of the Limitation Act. The plaintiff had sought for exclusion of time during when third party had filed suit and sought for order of status quo but the Court held that the time began to run from the date of decree itself and it could be stopped only in three circumstances: One, where the decree was conditional; when the contingency of such condition was fulfilled; two, where the decree was preliminary till the passing of final decree and three, where its enforceability is made post-dated or postponed by orders of the Court itself. The Court accepted these objections and dismissed the execution petition.

4. I find that the order of the Court below is erroneous and its reliance on the judgment of the Supreme Court in Hameed Joharan (d) and Others Vs. Abdul Salam (d) by L.rs. and Others, was not justified by the circumstances that existed in this case. When a third party had filed a suit and both the decree holder and the judgment debtor were parties to such a suit and the Court had directed the preservation of status quo in relation to the property, the decree holder could not have taken any action in relation to the property including prosecution of the petition for execution without offending the order of status quo passed by the Court. The Limitation Act itself provides certain exclusions where the decree cannot be executed. Section 15 of the Limitation Act provides for exclusion of time in certain other cases "in computing the period of limitation in any suit or application for execution of decree, the institution or execution of which is stayed by injunction or order, the time of the continuance of the order of injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded." Expression used in the Section could be seen to exclude any period of a specific order of injunction restraining the further execution or it could be an order that makes the execution impossible. Orders of injunction are invariably granted with an intention to preserve the status quo. Direction of a Court in a suit instituted by third party where both the decree holder of this document and the judgment debtors were parties that the property shall be preserved in status quo ought to therefore mean that the petitioner could not have enforced the decree for ejectment. Indeed, an attempt was made by the petitioner to state that the third party suit itself had been engineered by the judgment debtor to obtain an order to prevent the valid execution of the decree. I will not go into it but I will take it that the institution of the suit that resulted in an order for preservation of grant of status quo against the decree holder as sufficient proof of the subsistence of an order that prevented the plaintiff from enforcing the decree. Section 15 squarely operated against the execution of the decree and the entire period was liable to be excluded. So reckoned, the institution of the petition in the year 1996 was well within time. The Executing Court misdirected itself to wrong understanding of the law laid

down by the Supreme Court and failed to advert to Section 15 of the Limitation Act which squarely operated against the defendant. I find that the judgment debtor and his legal representatives have done everything to scuttle a lawful decree which has been obtained. The order passed is set aside and the execution petition shall be carried to its logical end and delivery of property effected expeditiously. The revision petition is allowed with costs throughout. Counsel''s fee Rs. 5000. There shall be also exemplary costs against the respondents assessed at Rs. 3500/-.

