

(1975) 04 OHC CK 0010
In the Orissa High Court
Case No : Misc. Appeal No. 66 of 1972

Sarat Chandra Patro	Vs	APPELLANT
Narasingha Patro and Others		RESPONDENT

Date of Decision : 18-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 49

Citation : AIR 1976 Ori 12

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : N.V. Ramdas and N.B.K. Murty, for the Appellant; R.K. Patra, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—This is an appeal by the plaintiff-decree holder in Title Suit No. 8 of 1960. In Second Appeal No. 315 of 1963 arising out of the said suit it was found that the suit house was the self-acquired property of late Linga Patra, the husband of plaintiff No. 1, but it had been built on a portion of the joint family property belonging to Linga and defendants 1 and 2. On that finding this court ordered that the decree-holder would recover possession of the suit house along with the suit site on which it was constructed on paying compensation to the defendants for having constructed the said house on a portion of the joint family property. The suit was remanded to the trial court to appoint a commissioner to demarcate the site on which the house had been constructed and to assess the valuation of the said site. The trial court was directed that after the aforesaid demarcation and valuation of the suit site, it would give direction for the payment of compensation by the decree-holder to the defendants for constructing the house on the joint family property, and would pass necessary orders to give effect to the decision arrived at by the High Court in the said second appeal including the question of delivery of possession in favour of the plaintiff. The trial court assessed the valuation of the suit site at Rs. 2,200/- and

directed the decree-holder by its decree to pay half of the said amount, i. e. Rs. 1,100/- to defendants 1 and 2 towards compensation and thereafter to recover exclusive possession of the suit house to himself. It also decreed that the decree-holder would remain in joint possession of the rest of the suit land along with defendants 1 and 2. Plaintiff No. 1 deposited Rs. 1100/- in court on the aforesaid account. Defendants 1 and 2 preferred Title Appeal No. 24/66 against the aforesaid decision of the trial court. That appeal was allowed on 11-5-1968, the valuation of the suit site was increased to Rs. 3300/- and it was held that the decree holder was liable to pay half of the same, i. e. Rs. 1650/-, to defendants 1 and 2 towards compensation within two months thereof. The operative portion of the judgment reads as follows: --

"The respondent shall be liable to pay Rs. 1650/- as compensation to the appellants. On payment of such compensation within two months hence the respondent shall be entitled to recover exclusive possession of the double storied house and the site over which the said building stands."

2. Admittedly, the decree-holder has started the Execution Proceeding No. 35/66 and in that proceeding the decree-holder had deposited Rs. 1100/- on 30-9-1966. After the decision in Title Appeal No. 24/66, the decree-holder could not deposit the balance compensation amount of Rs. 550/- within the period of two months as mentioned in the operative portion of the order of the appellate court. Thereafter the defendants filed M. J. C. No. 6/71 and contended that the above-mentioned execution proceeding was not maintainable as the entire amount of Rs. 1650/- had not been paid within two months as directed by the District Judge in T. A. No, 24/66. The Subordinate Judge in seisin of the execution proceeding dismissed the said M. J. C. holding that the time stipulated in the appellate court's order was meant only to facilitate payment by the decree-holder of the aforesaid compensation amount and not for any other purpose. The subordinate Judge further held that non-payment of the compensation amount or a part thereof within the time prescribed in the appellate court's order did not render the decree ineffective or not executable for all times to come.

3. The defendants filed Miscellaneous Appeal No. 32/72 in the court of the District Judge against the aforesaid decision of the Subordinate Judge in M. J. C. No. 6/71 and the District Judge allowed the said appeal by holding that the executing court could not ignore the prescribed time fixed for the payment of the compensation amount and it could not go behind the terms of the decree and could not make a new decree under the guise of interpreting the court's decree. As the balance compensation amount of Rs. 550/ had not been paid by the decree-holder within the stipulated time, the District Judge dismissed the execution proceeding holding that the decree-holder was not entitled to recover possession of the suit house and the site due to the non-payment of the aforesaid balance compensation amount in time. This appeal has been preferred against the said decision of the learned District Judge.

4. Mr. Ramdas, the learned counsel for the appellant, contends that the above-

mentioned decision of the District Judge and the reasoning on which the same is based are entirely illegal and incorrect and are liable to be set aside. Mr. Ramdas submits that admittedly the decree-holder had deposited Rs. 1100/- in the execution case in accordance with the decision and direction dated 27-4-1966 of the trial court, and that the time specified in the decision dated 11-5-1966 of the appellate court in T. A. No. 24/66 could not be adhered to due to the death of the original decree-holder and various other difficulties in the family. Apart from stating so, he urges that merely for the non-payment of the balance compensation amount of Rupees 550/-, the execution case for the delivery of possession of a double storeyed house as decreed in favour of the plaintiff should not and could not have been dismissed. He submits that the time mentioned in the operative portion of the judgment in Title Appeal No. 24/66 is merely to facilitate early payment of the amount to defendants 1 and 2, and that period of time is not the essence of the decree and is not such an integral part of the same as would entail dismissal of the execution case debarring the decree-holder to take possession of the double storeyed house only for the nonpayment of Rs. 550/-. Mr. Ramdas further contends that as the order directing payment of the aforesaid compensation amount is silent regarding the effect of the non-compliance of the same, the said direction is not the essence of the matter and hence the court below on a consideration of the facts and circumstances of the case and the dire consequences involved in dismissing the execution case should not have construed the order in the manner done by him. In support of his above contentions Mr. Ramdas has cited the decision in *Nanha v. Baroo*, (AIR 1952 Pepsu 88) wherein, on a similar question it has been held as follows:--

"..... though the Judicial committee gave the appellants six months to deposit the amount and ordered that they can get the possession of the land only if the deposit is made, the judgment is silent as regards the effect of the appellants' failure to deposit the amount. This makes me think that time fixed for the deposit was not the essence of the matter, and even though the deposit was not made within time the appellants right to obtain possession was not altogether lost. Different, however, would have been the condition if it had been laid down by the Judicial committee that if deposit was not made within time the appellants suit for possession or the land shall stand dismissed or that they would be debarred from taking the possession.

It was urged by the respondents' counsel that when time is once fixed for performance of a certain act in a decree it cannot be extended u/s 148. This is no doubt the general rule, but there are exceptions to it. In this connection I cannot do better than to refer to a Bench decision of the Patna High Court, *Surajmal Marwari and Another Vs. Bhubaneshwar Prasad and Others*, . It was held that "though general rule is that where a party is required to do something under a decree the time-limit is prescribed for doing it, the court which passed the decree has no jurisdiction to extend the time limit but it is subject to the qualification that where the decree or order which fixes the time is not intended to be final and the court still retains control over the proceedings the court may

extend time u/s 148. It was further held that whether the court still retains control over the proceedings or not must be determined upon the nature of the proceedings and the order passed therein. In the present case, absence of any order on the part of the Judicial Committee that if the appellants do not deposit the amount within time they would lose right to obtain the possession of the land makes me think that its intention was that their direction in so far as it related to the time fixed for the deposit of the amount was not final and it was intended that the court should still retain control over the proceedings."

The above observations aptly apply to the present case. In the operative portion of the order in T. A. No. 24/66 quoted above, fixing the time-limit to pay the aforesaid balance compensation amount, there is no order to the effect that if the said amount is not deposited within the said time the decree holder will lose his right to obtain possession of the double storeyed house and the portion of the land on which it stands, The absence of an order to that effect indicates that the court wanted that the said amount should be paid within that time so that the matter pending in court for a long time can be finally disposed of without unnecessary delay. In the context and perspective of the facts and circumstances of this case the specification of time in the said order does not appear to be the essence of the said order. The Court below has proceeded on the basis that the executing court cannot accept payment of the said amount after the aforesaid time prescribed in the decree, as the executing court cannot under any circumstance or event ignore the time prescribed in the decree for the payment of the same. It also observes that it is the duty of the executing court to give effect to the terms of the decree and it has no power in any event to go beyond its terms. That no doubt is the general rule, but there are exceptions to the same, In this connection the observations in Surajmal Marwari and Another Vs. Bhubaneshwar Prasad and Others, referred to in the decision in Nanha's case AIR 1952 Pepsu 88 quoted above may be seen. The executing court is not merely to execute the decree as an automaton and/or in a mechanical manner and in certain cases it is the duty of the executing court to properly construe the decree in order to find out the true import and effect of the same, so that it can proceed to execute the decree in its true and correct perspective giving full effect to the same. In Topanmal Chhotamal Vs. Kundomal Gangaram and Others, it has been held:

"For the purpose of interpreting a decree when its terms are ambiguous, the court would certainly be entitled to look into the pleadings and the judgment: See Manakchand v. Manoharlal 71 Ind App 65 : AIR 1944 PC 48."

In Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another, their Lordships of the Supreme Court have observed :--

"19. It is true that an executing court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceeding leading upto

the decree. In order to find out the meaning of the words employed in a decree the court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution court and if that court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. Evidently the execution court in this case thought that its jurisdiction began and ended with merely looking at the decree as it was finally drafted. Despite the fact that the pleadings as well as the earlier judgments rendered by the Board as well as by the appellate court had been placed before it, the execution court does not appear to have considered those documents."

5. In the present case, after a chequered career the plaintiff's suit for a declaration of title and delivery of possession of a double-storeyed house and the site on which it stood was decreed. As per the compensation assessed earlier by the trial court, the decree-holder deposited Rs. 1100/- to be paid to defendants 1 and 2 as compensation for their share. Subsequently, on appeal against the said order, the appellate court directed payment of Rs. 550/- more as compensation amount on the aforesaid account. This amount of only Rs. 550/- could not be paid by the decree-holder, within the prescribed time granted by the appellate court. As stated above, the appellate court while specifying the time to deposit the said balance amount did not pass any peremptory order regarding the effect of the appellant's failure to deposit the amount within that time. Dismissal of the execution proceeding only for the non-payment of a small amount of Rs. 550/- would be of dire consequences to the decree-holder for thereby he would for all times to come lose his right and title to the double-storeyed building for which the plaintiffs had to fight out this long-drawn litigation for quite a number of years.

6. Considering all the facts and circumstances of the case and on a proper construction of the above-quoted operative portion of the order passed in Title Appeal No. 24/66, I am firmly of the opinion that the time limit specified therein is not the essence of the matter decided by the court nor of the decree passed therein, and it can be extended in order to give due and full effect to the decree passed in this suit. Therefore, the court below, in the facts and circumstances of this case, was not at all justified in dismissing the execution proceeding merely for the non-payment of the aforesaid balance compensation amount within the said period of two months, only on the ground that it could not go behind the written terms of the decree.

7. On the above considerations, the impugned order is set aside and the Miscellaneous appeal is allowed with costs. The executing court after receipt of the lower court records should direct the decree-holder by notice to pay the aforesaid balance compensation amount within a reasonable time, and thereafter proceed to dispose of the execution proceeding in accordance with law. In case the decree-holder does not deposit the said balance amount within the time fixed by the executing court that court will be free to pass any lawful order as it deems fit and proper on that matter.

The L. C. R. be sent back immediately.