
(2016) 07 GAU CK 0056
In the Gauhati High Court
Case No : C.R.P. (I/O) No. 8 of 2014

Satya Prasad Barua

APPELLANT

Vs

Rejaur Rahman

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : (2016) 165 AIC 580 : (2016) 5 GauLJ 645 : (2016) 5 GauLR 542

Hon'ble Judges : Mr. N. Chaudhury, J.

Bench : Single Bench

Advocate : Mr. H.K. Deka, Senior Advocate and Mr. P. Sundi, Advocate, for the Petitioner; Mr. G. Sharma, Advocate, for the Opposite Parties

Final Decision : Disposed Off

Judgement

Mr. N. Chaudhury, J.(Oral)—The order dated 27.09.2013 passed by the learned Munsiff No. 2, Kamrup, Guwahati in Title Execution Case No. 12/2007 in Misc. Case No. 292/2013 has been called in question in the present revision petition by the decree holder.

2. The decree holder herein was a tenant under the judgment debtor with respect to a shop room measuring 746 sq. ft. in an Assam Type house located at Ulubari Chariali in Guwahati. The judgment debtor being landlord wanted to demolish the house for making reconstruction and this is how a dispute arose between the landlord and the tenant. It led to institution of Title Suit No. 131/2001 as well as Title Suit No. 275/1997 in the Court of learned Civil Judge (Junior Division) No. 2 at Guwahati and ultimately both the suits were compromised by the parties. Accordingly a compromise decree was passed on 25.06.2003. The compromise petition filed by the parties containing the terms of compromise was made a part of the decree. The said decree, inter alia, contained the following provisions :-

"1(Ka) As, instead of 746 of sq.ft. of area in the Assam Type House, only 345

Sqft. of area will be given to the second party Sri Satya Prasad Barua in the new RCC building's ground floor, first party Md. Ubedur Rahman will construct and hand over the room comprising 345 Sqft. area as well as with RCC mezzanine floor.

(kha) Though, according to plan, the height of the would be RCC building is 16 ft. yet, by taking permission too, if necessary, from the GMDA, the first party Md. Ubedur Rahman will make the height of the 345 Sqft. of floor area of ground floor to be used by Sri Sayta Prasad Barua, to 18 ft. by digging 2 ft. extra of his (Satya Prasad Barua) 345 Sqft. floor area. By the above noted way of construction the total height from the ground to the upper ceiling of the total floor area to be used by Sri Satya Prasad Barua will be 18 ft. The first party will make this 18 ft. height into two parts and construct RCC mezzanine floor.

5. After giving complete possession of 345 Sqft. of area according to 01(Kha) to the second party in the new would be RCC building of first party, the rent will be fixed at the rate of rupees ten per Sqft.

9. Within seven months from today, the first party will complete the construction of the would be RCC building and hand over the possession of 345 sqft. to the second party, as defined in above noted 1(kha) and Annexure-II.

12. The first party, in the new would be RCC building's 345 Sqft. meant for second party will arrange to provide 3 KW electricity with meter, at his (first party) own cost, to do business by the second party.

16. If the first party before signing of the deed of compromise agreement with second party, was doing any agreement with any other party, for the space as defined in Annexure-II and if after signing of this deed of agreement the first party does not complete the construction of 345 Sqft. of area's room due to the first party according to the above noted 1(kha) and Annexure-II or if the first party after signing of this deed of compromise make any agreement with any other party for the complete area or part thereof, as defined in Annexure-II by which the due specific place and area due to the second party is changed then the first party will be liable for that and second party by the force of the deed of compromise will be able to occupy the due 345 Sqft. and will be at liberty to take action according to any clause of this compromise deed.

18. There will be good provision of latrine in the new would be RCC building of the first party for the use of the workers of the second party, which is existing in the present Assam Type House too.

19. In the mezzanine floor to be built by the first party for the use of the second party in the new would be RCC construction, the second party, for his personal use only will construct a toilet at his own cost. The wastes and waste water of this toilet will flow into the main sanitary tank of the first party, the work of which will be done by the second party.

22. Today, hereby, the first party agreed to the second party to allow to construct

an underground water tank, measuring 6th in breath, 10 ft. in length and 6ft. in depth, at the cost of the second part. The place of the tank, to be constructed, will be at the vacant space of eastern side of the new RCC building of the first party and which will be by the side of the Ashram Road. The cost will be borne by the second party.

33. Due to any reason, over and above the clause mentioned in the deed, if the first party failed to give possession of 345 Sqft of room to the second party according to the clauses of this joint petition after seven months from this date of this petition, the first party agreed to pay compensation @ Rs. 500.00 (Rupees five hundred) only per day, till the date of possession as defined in the clauses of this joint petition. This compensation will be paid by the first party to the second party after completion of every such subsequent fifteen days. Otherwise the first party will be liable for any expenditure made by the second party for the recovery of the amount of this default."

3. As per the compromise decree referred to above the judgment debtor was supposed to hand over vacant possession of 345 sq. ft. of the shop room at the ground floor with a height of 18 ft. in the manner as suggested in the compromise deed along with mezzanine floor within a period of seven months. The construction was made by the judgment debtor but according to the decree holder he was not handed over 345 sq.ft. area at the ground floor. According to the decree holder, he was only handed over 319 sq.ft. area and so he was still entitled to remaining space of 26 sq.ft. floor area of the ground floor. Apart from that, Clause 12, Clause 18, 19 and 22 were also not complied with by the judgment debtor. Under such circumstances, execution case was instituted by the judgment debtor with a prayer for complete execution of the compromise decree referred to above.

4. The judgment debtor appeared and submitted a written objection denying the allegation levelled in the application and prayed for dismissal of the execution case. A series of applications and counter-applications were filed by both sides before the executing court and ultimately a survey commissioner was appointed by the learned executing court on 22.09.2009. The survey commissioner in his report dated 27.10.2009 opined that total floor area given to the decree holder was 309.46 sq. ft. out of which an area measuring 283.33 sq.ft. is found to be with a height of 16.83 feet and the remaining area of 26.13 sq. ft. is of the height of 15.35 feet only from the floor to the ceiling level. On the basis of the aforesaid report the learned executing court passed an order dated 09.02.2010 observing that height and area of the premises given to the decree holder is not as per the terms of the decree and since the present structure cannot be changed without demolition this part of the decree cannot be executed. However, it was observed that the judgment debtor shall take necessary steps for providing 3 KW electricity load to the decretal premises and shall take steps for cleaning the drain from the premises of the decree holder to main municipality drain along with other directions. The judgment debtor thereafter claimed that he

has already complied with the decree by filing an application on 01.10.2010 which was contradicted by the decree holder by filing an objection on 04.03.2011 and a direction was prayed for as per Clause 33 of the compromise petition dated 20.06.2003. On 22.06.2011 the decree holder filed yet another application asking for direction from the executing court to hand over possession of the adjacent shop room so as to make amends for the balance 26 sq. ft. of floor area to him but even that prayer made by the decree holder was not allowed by the learned executing court in his order dated 15.03.2013. The learned trial Court passed an order observing that judgment debtor has not complied with the terms mentioned in the clauses of the said order. However, direction was restricted to as many as four items like providing electricity load of 3 KW to the decree holder, cleaning the drain of the premises of the decree holder, connection of sanitary line from the toilet of the decree holder at the mezzanine floor and providing open space to the decree holder for construction of underground water tank. No mention was made in this order about compensating the decree holder with the remaining 26 sq.ft. of floor area. The decree holder thereafter filed an application for review in June, 2013 and that review petition has been disposed of by the order dated 27.09.2013 which is the subject matter of the present revision petition.

5. I have heard Mr. H.K. Deka, learned senior counsel assisted by Mr. P. Sundi, learned counsel for the petitioner and Mr. J. Sharma, learned counsel for the opposite party/judgment debtor.

6. The decree holder herein is the tenant of the judgment debtor. He had been in occupation of a premise measuring 746 sq. ft. when there was an Assam Type house. The aforesaid tenanted room was used for his business purpose. The landlord thereafter proceeded to make construction of an RCC building and this is how a dispute arose between the landlord and the tenant. Be that as it may, the disputes came to an end on a compromise as referred to above. The compromise decree was passed on 25.06.2003 and the compromise petition filed by both sides formed a part of that decree. Whether decree has been passed on the basis of compromise or on contest does not have any relevance so far as the compliance of the decree is concerned. It was expected that the judgment debtor would have complied with the decree in time but he having failed to do so the decree holder was compelled to institute title execution case before the executing court. Under such circumstances the only task left open to the executing court was to see that the compromise decree passed by a competent civil court is taken to its logical conclusion by proper execution. An executing court could not have gone behind the decree unless the decree is found to be nullity. In the case in hand it is not the finding of the learned executing court that failure on the part of the judgment debtor to hand over possession of 345 sq. ft. as rented premises to the decree holder was a nullity. The learned court observed in order dated 09.02.2010 that execution of such decree would involve demolition and so it is not possible. But such approach of the learned executing court does not appear to be proper and correct. In the case of *Ramrup Rai v. Mst. Gheodhari Kuer* and

others reported in AIR 1980 PATNA 197 the Division Bench of the Patna High Court faced with such exigency. In that case the Division Bench of the Patna High Court observed that where defendant puts up construction pendent lite or after passing of the decree, then the executing Court can order demolition of the structures and deliver vacant possession. Besides, the terms of the decree involves items like handing over vacant possession of 345 sq. ft. to the decree holder for being used as tenanted shop premises on payment of rent. Such clause of the compromise petition having been incorporated in the decree itself this proposition of handing over 345 sq. ft. of tenanted premises at the ground floor became a decree of injunction for all practical purposes. If the judgment debtor fails to comply with an injunction decree, in that event he becomes liable for appropriate actions in terms of the provision of Order 21, Rule 32 of the CPC. The learned executing court was not helpless after having discovered that an intelligent landlord after having entered into compromise with the tenant and after having got a compromise decree on terms of certain conditions subsequently turns back and chooses to disobey the decree, in that event it becomes a case of wilful non-compliance of the decree passed by the learned trial court and under such circumstances such a decree of injunction for all intents and purposes can be put into execution in accordance with the provision of Order 21, Rule 32 of the CPC. The learned executing court without doing so came to a finding that the decree was inexecutable. However, it does not appear that attention of the learned court was drawn to the provision of Order 21, Rule 32 of the CPC from the side of the decree holder. Be that as it may, the execution proceeding is still pending in regard to the other four items mentioned in the impugned order under review. The learned counsel for the decree holder strenuously urges that even after handing over possession of the shop premises measuring 319 sq. ft. to the decree holder, an adjacent room had fallen vacant. Had the judgment debtor any intention to comply with the terms of the decree, in that event he could have handed over the required floor area to the tenant decree holder from that vacant room but he did not do so which is only indicative of his adverse intention to comply with the decree. After all, decree holder is not getting ownership right to the aforesaid floor area. He will be given only right of a tenant under the provision of the Assam Urban Areas Rent Control Act, 1972 and so he is liable to make payment for rent at the agreed rate of Rs. 10/- per sq. ft. for the area handed over to him. Of course, this rate amount is subject to enhancement after two years as per terms of the decree. So the judgment debtor cannot be heard to say that the area handed over to the decree holder contains also the common area as is applicable in case of transfer of ownership flats in a multi storied building. Fact remains that there is a compromise decree for handing over of 345 sq.ft. floor area to the tenant at a rental of Rs. 10/- per sq. ft. By inducing the tenant to accept the decree the original tenanted premises measuring 746 sq.ft. was demolished and thereafter new RCC construction was made by the judgment debtor and wilfully reduced the tenanted premise to 319 sq. ft. Since construction was made after passing of the compromise decree, the judgment debtor was very much aware that he was under legal obligation to

hand over 345 sq. ft. of vacant space at the ground floor of proposed construction to the decree holder along with other requirements of the compromise decree. Had the construction been made prior to passing of the compromise decree, in that event the question would have been altogether different. But here is a case where a compromise decree was passed and this judgment debtor had assured the court that he would be handing over 345 sq. ft. of vacant space to the decree holder and thereafter he made provision for only 319 sq. ft. of floor area. Such an action on the part of the judgment debtor does not deserve any leniency from the executing court. Once a compromise decree was passed by the learned court and construction has been made thereafter the learned executing court is supposed to see that the decree is implemented in entirety.

7. The impugned orders passed by the learned executing court are accordingly set aside and the matter is remanded to the learned executing court with a direction to ascertain as to whether the terms of the decree have been complied with by the judgment debtor and if not in that event to take appropriate steps including recourse of the provision of Order 21, Rule 32 of the CPC. The parties shall appear before the learned executing court on 31.08.2016 for obtaining necessary orders. The revision petition stands disposed of. No order as to cost.