
(1967) 08 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 45 (S) of 1967

Satyesh Dutt Misra

APPELLANT

Vs

Munoo Devi Kahar

RESPONDENT

Date of Decision : 21-08-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 5, Order 47 Rule 1, 151

Citation : AIR 1968 All 362 : (1968) 38 AWR 890

Hon'ble Judges : R. Chandra, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : M.L. Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This is an application made by Sri Satyesh Dutt Misra (hereinafter called the applicant) for the stay of the execution of the ejectment part of the decree until the review application made by the applicant has been disposed of.

2. Our brother, Lakshmi Prasad, had dismissed a second appeal filed by the applicant on the ground that no question of law was involved in that appeal. The only question that was urged before Lakshmi Prasad, J. was whether the house in dispute was constructed in 1960 or earlier. He was of the opinion that the question was one of pure fact. He felt himself bound by the finding recorded by the first appellate Court that it was constructed in 1951. After the judgment had been sealed and signed on 26th July, 1967, the applicant made an application for the review of that judgment on 4th of August, 1967. The ground on which the review application is founded is that a learned single Judge of this Court (Dhawan J.) has in *Khiva Ram v. Prabha Devi* 1965 All LJ 1045, held while dealing with a similar question that it was a finding in respect of a jurisdictional fact and could be reopened in second appeal. Lakshmi Prasad, J. was of the opinion that there are no merits in the review application and that he did not agree with the decision recorded by Dhawan, J. in *Khiva Ram v. Prabha Devi* (Supra). He was

also of the opinion that Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, , on which Dhawan J., relied was not applicable to the facts of the case and was clearly distinguishable. But in view of the existence of 1966 All LJ 1045 (Supra), Lakshmi Prasad, J. thought that the proper thing to do would be to refer the matter to a Bench so that the correctness or otherwise of 1966 All LJ 1045 (Supra) may be decided. The order passed by him reads:--

"Left to myself I would have dismissed the application for review but because of the decision of the learned Single Judge which does appear to support the stand of the applicant, I direct that the record of the case be laid before the Hon'ble the Chief Justice for referring it to a larger Bench to reconsider the view expressed by the learned Single Judge in the case cited above".

3. The applicant has prayed in the instant application that proceeding for his ejectment be stayed until the review application is disposed of. The legal and the factual position is that so far as this Court is concerned, the matter has been finally adjudicated upon by this Court inasmuch as the second appeal of the applicant was dismissed under Order 41, Rule 11, Civil P. C. on 26th July 1967. The mere fact that a review application has been made does not in any way diminish the effect of the order of this Court dated 26th July 1967 dismissing the second appeal of the applicant and the decree of the first appellate Court which has become final.

4. The Court at present is not seized of the matter relating to the merits of the controversy, but only whether or not the order of Lakshmi Prasad, J., dated 26th July 1967 should be reviewed. Until it is reviewed the rights between the parties stand fully and finally adjudicated upon and nothing can be done by this Court to disturb those rights. There is in favour of the respondent a valid decree passed by the first appellate Court which has become final. He has valuable rights under that decree and he cannot be divested of those rights even temporarily only because a review application has been made in this Court. Whether or not the review application is competent is another matter, but the question is that before we deprive the respondent of the fruits of his decree, which has become final we must have some legal provision on the basis of which we can take this extraordinary step. Learned counsel has not pointed out to us any provision of law under which the instant application can be held competent. All that he could say was that such an application would lie u/s 151, Civil P. C. Section 151, Civil P. C., only reiterates the general principle that every Court has inherent powers to make such orders as may be necessary in the interest of justice or to prevent abuse of the process of the Court. In view of the circumstance that the decree of the respondent against the applicant has become final not having been interfered with by this Court, it can neither be in the interest of justice nor can it be to prevent abuse of the process of the Court to suspend the operation of that decree which is in all respects effective and binding. Actually, if we disturb a decree already passed by a competent Court we would ourselves be committing an abuse of the process of the Court and would be passing an order which can

never be in the interest of justice.

5. The matter is still doubtful whether the judgment dated 26th July 1967 would be reviewed at all. Until that judgment is reviewed, this Court cannot either circumvent or bypass or supersede or alter or modify the decree passed by the first appellate Court, by passing a stay order which will be in the teeth of the decree. We have no hesitation in saying that Section 151, Civil P. C., was never intended for a case like the one before us. It is well settled that an orders u/s 151, Civil P. C. can be passed which would have effect of either altering or modifying or destroying or suspending the effect of a decree. All that Mr. Trivedi could urge was that every day in second appeals after admission, stay orders are passed. This analogy cannot be extended to a case. In second appeals the provisions of Order 41, Rule 5, Civil P. C., apply, but to a review application those provisions are not applicable. The second appeal is not pending before us. It has already been dismissed. Only because a review application has been made, we cannot proceed on the footing that the second appeal, which has already been dismissed, is still pending. Under these circumstances we find no merits in this application. It is accordingly rejected.