
(1985) 08 RAJ CK 0066
In the Rajasthan High Court
Case No : Civil Revision No. 544 of 1985

Sita Ram Dangayach

APPELLANT

Vs

Suraj Narain and Others

RESPONDENT

Date of Decision : 16-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1985) 2 WLN 315

Hon'ble Judges : Panna Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Panna Chand Jain, J.—This revision petition is directed against the order dated 6th August, 1985, passed by the learned Addl. District Judge No. 1 Jaipur City, Jaipur, by which an application filed by Sita Ram alleged to be under Order 21 Rule 36 read with Section 151, CPC, has been dismissed in the course of deciding the execution application filed by one Suraj Narain, decree-holder, against Gordhan, judgment-debtor, arising out of the decree dated 12th March 1973, passed in Civil Suit No. 54/1961.

2. Briefly stated the facts of the case are that plaintiff Suraj Narain instituted a suit for possession against Udai Narain and others. The property with respect to which the possession was claimed is a temple known as temple of Thakurji Harsh Bihariji and is situated in Kishanopol Bazar, Jaipur. It was alleged in the suit that one Shri Ganga Chand was a trustee of the temple who died in the year 1916, leaving behind Gopi Devi, his widow and two sons Gopal and Lal Chand. Gopal and Lal Chand died during the life-time of Gopi Devi. In the suit it was alleged that Gopi Devi appointed Udai Narain as Pujari of the temple. It was also contended that Gopi Devi made will in favour of Udai Narain before her death. Gopi Devi died on 7th June, 1956. In the matter of the will, Suraj Narain (sic Udai Narain) obtained a probate in favour of Udai Narain. The learned Additional District Judge vide his judgment dated 12th March, 1973, decreed the suit of the

plaintiff. Suraj Narain and held that the letters of administration issued in favour of Suraj Narain(sic Udai Narain) were ineffective and against the rights of the plaintiff as trustee on account of his being a reversioner. A decree for possession of the property was accordingly passed in favour of the plaintiff and against the defendant. After the passing of the decree on 12th March, 1973, an appeal was preferred to this Court which was also dismissed on 30th January 1984. A special appeal was also preferred against the judgment of the learned Single Judge, but the same was also dismissed vide judgment dated 23rd May, 1984, by a Division Bench of this Court.

3. The decree-holder filed an execution petition before the Executing Court praying for delivery of possession from Gordhan son of Udai Narain. During the course of execution an application was filed by Sita Ram, petitioner in this revision petition. In the application Sita Ram contended that he is an old tenant and that he had been paying rent to his land-lord Udai Narain. Certain receipts were also filed with regard to the payment of rent. This application was contested by the decree-holder who raised a number of objections about the right of Sita Ram to move such an application and about the maintainability of the application. The learned Additional District Judge No. 1, Jaipur City vide his order dated 6th August, 1985, dismissed the application. Aggrieved by the impugned order dated 6th August, 1985, Shri Sita Ram filed revision petition before this Court. It has been listed for admission. The decree-holder entered upon a caveat and after hearing both the parties, this revision petition is being disposed of finally.

4. Shri C.K. Garg, learned counsel for the petitioner submitted that Udai Narain was in lawful possession of the property at the time when he inducted Sita Ram as a tenant in the property and as the petitioner is a tenant, the decree-holder is entitled to take symbolic possession and cannot dispossess the petitioner in the execution. He further submits that being a tenant he is entitled to the protection of the Rajasthan Premises (Control of Rent and Eviction) Act, which provides that a decree for possession cannot be passed against a tenant unless the requirements of Section 13 of the Rajasthan Premises (Control of Rent and Eviction) Act are complied with. Mr.Garg also submitted that the learned trial Court passed the impugned order without any proper enquiry. Controverting the contentions made by Shri Garg on behalf of the petitioner, the learned counsel for the respondents submitted that the order passed by the learned Additional District Judge is in conformity with the provisions of law. The application was rightly dismissed as it was not maintainable. He also submitted that the revision petition is not maintainable as the questions raised by the learned counsel for the petitioner are all questions of fact rightly considered by the lower Court. The main dispute is about the fact as to whether Sita Ram is a tenant or not, or even if he is a tenant from what date his tenancy commences. On this point, Mr. Bardhar learned counsel for the respondent, submits that there is a clear finding given by the learned lower Court that the tenants were inducted in the suit premises after the institution of the suit.

5. I have given my anxious consideration in the matter of respective submissions made by the learned counsel for both the parties. Shri C.K. Garg, learned counsel for the petitioner, submits that in the fact and circumstances of the case, the provisions of Order 21 Rule 36 CPC are attracted. It is a case where in a decree for the delivery of immovable property a tenant is in the occupancy of the premises and, as such, the tenant is entitled to retain his possession and a decree-holder is only entitled to a symbolic possession and in such circumstances, a tenant cannot be ejected. His contention is that his application is not under Order 21 Rule 97, CPC and, therefore, the question of consideration under Order 21 Rule 97, CPC does not arise in this case. The main contention of fact is Sitaram, the petitioner, was inducted as a tenant by Udai Narain when he was appointed as Pujari of the temple, and, as such, even if his son Gordhan is required to be dispossessed from the suit premises on account of the decree having been passed by the learned lower Court, still the possession of Udai Narain cannot be regarded as a possession of rank trespasser. Udai Narain inducted Sita Ram as a tenant on the basis of a will for which the Probate Court granted letters of administration, even otherwise also Shri Garg submits that Udai Narain having been appointed as a Pujari by Gopi Devi widow of trustee of Shebait on the property, her acts cannot be regarded as void, as Suraj Narain even if he has been regarded as last male holder was merely a reversioner.

6. Mr. Bardhar on behalf of the respondents submits that the petitioner cannot be permitted to travel beyond the pleadings. As per his submissions in the application which is alleged to have been moved under Order 21 Rule 36 CPC, there is no mention as to the date of tenancy. In the application, it has not been pleaded as from whom Shri Sita Ram derives his tenancy. The only thing mentioned in the application is that he is an old tenant and that the rent was paid to Udai Narain. Even the rent receipts filed in the proceedings before the Executing Court are of the period subsequent to the institution of the suit. He has also drawn the attention of the Court to Annexure-I, which is a plaint filed by Suraj Narain in which there is a clear mention about the persons who were in possession of the suit property. Amongst the persons who were said to be in possession of the suit property, there was no mention of the name of Sita Ram. His contention is that a decree for possession having been passed in favour of Suraj Narain and against Gordhan son of Udai Narain any person claiming his right or interest from Udai Narain cannot be placed in a better position and such a person is undoubtedly a person bound by the decree in execution of which the decree-holder is claiming possession.

7. To substantiate his argument, Mr. Garg appearing on behalf of the petitioner has placed reliance upon M.M. Jamadhar Vs. Amirbi, . On the basis of this authority, Mr. Garg submits that no warrant for possession could be issued for delivery of possession against a tenant and a tenant is entitled to the protection of the provisions of the Rajasthan Premises (Control of Rent and Eviction) Act. In that case, the following observations were made by Court:

The provisions of the Rent Control Act clearly lay down that no tenant can be dispossessed except by an order of court, to be passed under the provisions of the Rent Control Act. If it is so, the issue of warrant by the executing court under Order 21 Rule 35(1) CPC and thereafter ordering delivery of actual possession of the properties which are in possession of the tenants, are once passed without jurisdiction. Such order is highly illegal. The Court below has acted illegally, with material irregularity and without jurisdiction in issuing the warrant under Order 21 Rules 35(1) CPC.

8. He has also referred Shamsuddin Vs. Abbas Ali, in which it has observed that possession under Rule 35 is given when judgment-debtor is in possession, while possession under Rule 36 is directed when some body else other than judgment debtor is in possession and that where the possession is with the tenant or other person entitled to occupy the same, in which symbolic possession can be delivered, as symbolic possession can in such cases operate as actual possession against judgment-debtor. Mr. Bardhar submits that these authorities are quite distinguishable as in Karnataka's case the factual position was quite different. He submits that in that case a decree for possession was passed in a suit for partition between the parties and that admittedly the defendants No. 8 to 19 were tenants and were made parties to the suit and a decree as such was passed. He thus, submits that on the premise of the fact the judgment of the Karnataka High Court laying down the aforesaid principles is perfectly justified. As regards the case of Shamsuddin(supra), Mr.Bardhar has no objection about the proposition of law laid down there in. While further making his submissions Mr. Bhirddhar submits that there are two provisions provided under the CPC for filing objection-petition; one is under Order 21 Rule 58, CPC and the other provision is under Order 21 Rule 97, CPC and Order 21 Rule 130, CPC. In order to make his submissions further clear, Shri Bardhar referred to Madanlal Vs. Hansraj, wherein a distinction has been made about the provisions of Order 21 Rule 36 and Order 21 Rules 97 and 98, CPC.

9. Now, the main question to be determined in this is, whether Sita Ram is bound by the decree passed against Gordhan son of Udai Narain. Before considering this aspect of the matter it would be proper to consider as to who is a person bound by a decree. This question has been considered at length in the case of Hansa Lal v. Champa Lal Gopikishan Sabu Trust 1960 RLW 429, of this Court, in which the following broad narration of persons who can be held bound by the decree is given:

- (1) A person getting into possession of the property by succession of subsequent to the institution of the suit which results in a decree for possession.
- (2) a person getting into possession on transfer under sale or mortgage subsequent to the institution of the suit etc. and
- (3) a person in subordinate possession, which expression includes under-lessees, licensees and other persons getting into or let into possession by the judgment

debtor or any person bound by the decree otherwise than in their own right and title.

(a) in any case, if they get into possession subsequent to the suit, and

(b) if they get into possession prior to the institution of the suit provided their interest becomes extinguished on the passing of a decree for possession.

10. In the application by Sita Ram before the Executing Court, as already stated above, Sita Ram merely stated that he was the tenant inducted by Udai Narain and was paying rent to him. Will in favour of Udai Narain was made some where in June 1956, and immediately thereafter testator Smt. Gopi Devi died. The said will became operative after the death of Smt. Gopi Devi. For resolving the controversy it may be assumed that Sita Ram might have been inducted as a tenant by virtue of his right under the will. Even if this position is taken it does not help Sita Ram in any way, as in the decree dated 12th March, 1973, in the civil suit No. 54 of 1961, it is clearly held that the will in favour of Udai Narain did not give him any right, the letters of administration granted by the Probate Court were held to be ineffective. In this view of the matter, any person claiming through Udai Narain cannot claim to have better interest or right than that possessed by Udai Narain and, if a decree for possession has been passed against Udai Narain (after his death against his son Gordhan), Sita Ram cannot claim to have any right, to resist possession or for not giving delivery of possession in any manner. If possession, as per finding given by the lower Court be taken i.e. Sita Ram was inducted as a tenant after the institution of the suit, the position of Sita Ram becomes more critical. The learned lower Court while dismissing the application has clearly recorded a finding that the judgment-debtor inducted the tenants after the institution of the suit and that there is no material on the record to infer that Sita Ram was inducted as a tenant prior to the institution of the suit. This finding has been given by the learned lower Court after considering the respective contentions of both the parties and inquiring into the submissions made by the petitioner. The finding to this effect being a finding of fact cannot be assailed in the revision petition and I am in agreement with the contention raised by Mr. Bardhar, learned counsel for the decree-holder, that the petitioner should not be allowed to challenge the finding of the Executing Court in this behalf. I am also in agreement with the submission, that the petitioner should not be allowed to travel beyond the points pleaded by him in his application which was the subject matter of inquiry by the learned lower Court. The contention of Mr. Garg that no proper inquiry was made on his application is also devoid of force, as it appears that after the submission of the application along with an affidavit the decree-holder filed a reply along with a counter-affidavit and on the basis of that both the parties argued the case before the executing Court. Having argued the case on the material on record, it is too late to have contended that no proper opportunity was given to the petitioner. From the facts on record, it is clear that Sita Ram is a person bound by the decree as he was a person in subordinate position, as he was inducted into possession by

the judgment debtor. He does not claim his possession independently of Udai Narain. He owns no right, title or interest in property. It can also be said that the moment the right of possession of Udai Narain was extinguished by a valid decree passed against him, the possession of Sita Ram also became unlawful. Any how, it cannot be disputed that Sita Ram is a person bound by the decree dated 12th March, 1973, passed in the suit filed by Suraj Narain against Gordhan and that Sita Ram is not entitled to the protection of Order 21 Rules 36 CPC even if this provision gives Sita Ram any such right to resist possession, as Order 21 Rule 36 clearly provides that symbolic possession can be granted to the decree-holder, if the possession is held by a tenant who is not bound by the decree to relinquish the occupancy. Such is not the case. As such, the application of the petitioner was rightly dismissed by the lower Court. Sita Ram cannot claim an inquiry under Order 21, Rule 97 CPC, as under this provision only the decree-holder is entitled to move an application. An inquiry at the instance of a third party in possession is contemplated only under Order 21, Rule 100 CPC after such person was dispossessed and not before it. The executing Court has no jurisdiction to start an inquiry suo moto, or at the instance of the third party other than the decree-holder as per procedure under Order 21, Rule 97 CPC. Under Order 21, Rule 35 CPC, a person can be removed from the property who is bound by the decree and who refuses to vacate the property. A Full Bench of Smt. Usha Jain and Others Vs. Manmohan Bajaj and Others, observed that an inquiry at the instance of a third party in possession is contemplated only under Order 21, Rule 100 CPC after he was dispossessed and that no inquiry into the title or possession of a third party is contemplated at his instance either under Rules 35 and 36 or Rules 95 and 96 of Order 21 CPC when the decree-holder or the auction-purchaser applies or obtains possession. In Madan Lal's case, Justice M.C. Jain of this Court rightly expressed his agreement with the view taken by the Madhya Pradesh High Court in Smt. Usha Jain's case, and I respectfully agree with him.

11. In the result, I find that there is no force in the revision petition and hold that the order passed by the learned lower Court is perfectly justified and in accordance with law. The revision petition is accordingly dismissed. This order will not come in the way of the petitioner if he is advised to file a civil suit or any other legal proceeding, if the same is legally maintainable.