
(2005) 05 GAU CK 0040
In the Gauhati High Court
Case No : C.R.P. No. 395 of 2000

Smt. Arati Deb and Another	Vs	APPELLANT
Smt. Annapurna Chakraborty and Others		RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 47

Citation : AIR 2006 Guw 65

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : B.K. Acharjee, for the Appellant; A.C. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The order dated 19-7-2000 passed by the learned Sadar Munsif, Silchar, in MC 501/92 rejecting the application filed u/s 47 of the CPC read with Section 151 of the Code in Title Execution Case No. 12/77 is under challenge.

2. I have heard Mr. B.K. Acharjee, learned Counsel for the petitioner and Mr. AC Sharma, learned Counsel for the Opposite parties.

3. The facts in short leading to the filing of the instant petition are that one Smt. Bharati Devi instituted Title Suit No. 82/60 inter alia for ejectment of the petitioner's predecessor in interest late Ram Pyari Devi and the predecessor of the opposite party, Haripada Chakraborty and others. The suit was decreed and was affirmed finally by this Court in SA 198/95. The Suit land was described in Schedule "Kha" which was a part of land set out in Schedule "Ka" to the plaint. The decree was put into execution by one Subudh Choudhury contending that he had purchased the land and the decree by a registered sale deed dated 8-5-1995. The execution proceeding was registered as Title Execution Case No. 12/97. The execution was resisted by the judgment-debtors on various grounds by filing separate objection petitions u/s 47, CPC. During the pendency of the objection petitions, Haripada Chakraborty (since deceased), the predecessor in

interest of the present opposite parties, submitted an application on 27-6-1979 to strike out his name as a judgment debtor and to substitute him as the decree-holder in place of Subudh Choudhary. Another application was filed by Shri Subudh Choudhary disclosing sale of the decretal premises in favour of Haripada Chakraborty. The learned trial Court, however, rejected both the applications. The order being challenged before this Court in CR 43/80, the matter was remitted to the learned trial Court for fresh disposal after recording of evidence. The learned trial Court thereafter allowed the substitution of Haripada Chakraborty as decree holder by order dated 28-8-1986. The said order was unsuccessfully challenged by the predecessor in interest of the petitioners before this Court.

4-5. It was at that stage that an application was filed by the predecessor in interest of the petitioners" Ram Pyari Devi, praying for appointment of a Amin Commissioner for measurement of the decretal land alleging inter alia that the descriptions of the land in the decree and in the registered sale deed did not tally and, therefore, the decree was inexecutable as the decretal land was not identifiable in the locality. The application was registered as Misc. Case No. 501/1992. The learned trial Court after hearing both the parties by order dated 12-5-1993 allowed the prayer for appointment of an Amin Commissioner and directed the predecessor in interest of the petitioners to submit the writ for survey and deposit a cost of Rs. 200/- for the Survey. According to the petitioners, the fee, as ordered was deposited on 25-5-1993.

6. The opposite parties, however, being aggrieved by the said order, approached this Court with CRP 234/94, which was dismissed on 19-9-1997. On remand, the heirs and legal representatives of deceased Ram Pyari Devi and Haripada Chakraborty were substituted and the petitioners on 13-10-1999 prayed for appointment of the Amin Commissioner in terms of the earlier order dated 12-5-1993. The prayer was allowed on 26-11-1999 with a direction to the petitioners to submit the writ for survey along with cost of Rs. 250/- for the Survey Commission. The petitioner having pointed out that the cost of Rs. 250/- had already been deposited on 28-5-1993, the Court ordered issuance of the writ directing the petitioner to take steps afresh within seven days. After waiting for the Amin Commissioner"s report for several dates in between, the learned trial Court on 17-3-2000 in its order observed that the petitioner had not taken steps for which writ for the survey could not be issued. On 10-5-2000, an application was filed on behalf of the petitioners for time to take steps and the learned trial Court, considering the grounds mentioned therein rejected the prayer. Observing that in spite of sufficient time being granted to the petitioners, steps as ordered have not been taken, the learned trial Court cancelled the order of appointment of Amin Commissioner for want of steps. Thereafter, the suit was fixed on 26-6-2000, 1-7-2000, 10-7-2000 and eventually on 19-7-2000 (sic) the impugned order was passed.

7. Mr. Acharjee, learned Counsel for the petitioner has argued that the order

appointing the Amin Commissioner for survey of the suit land passed by the learned trial Court having been affirmed by this Court in CRP 234/93, the impugned order is patently illegal and is liable to be interfered with. According to him, the finding recorded by the learned trial Court discarding the anomalies in the boundaries of the decretal land and the land described in the sale deed in absence of any survey are not only illegal but also have vitiated the impugned order with an error of jurisdiction.

8. Mr. Sharma on the other hand Has submitted that as the petitioners had failed to take steps in terms of the order of this Court to get the writ of survey issued, the learned Court below was perfectly justified in cancelling the order of survey Commission. According to him, in absence of any acceptable evidence in support of the inconsistency in the boundaries of the land as sought to be highlighted by the petitioners, the impugned order cannot be faulted with.

9. I have carefully considered the rival contentions of the parties. On a perusal of the orders as available in the order sheet, it appears that though in terms of the order dated 12-5-1993, passed by the learned trial Court allowing the prayer for Survey Commission, deposit of Rs. 250/- had been made on 28-5-1993, no steps were taken for issuance of the writ in spite of the orders to that effect on 26-11-1999, 27-3-2000 and 5-5-2000 and the prayer for further time was rejected by order dated 10-5-2000 which remained unchallenged. Thereafter on 26-6-2000, 10-7-2000 and 27-7-2000, the petitioners were not represented by the learned Counsel and finally the impugned order was passed on 19-7-2000.

10. On the basis of the materials available on record and having regard to the orders as noticed herein above passed by the learned trial Court, it is not possible to uphold the contention of the learned Counsel for the petitioner that the Survey Commission ought to have been conducted as the order to the said effect had been affirmed by this Court. It is no doubt true that the decision of the learned trial Court in favour of the Survey Commission of the suit land was sustained by this Court but the implementation thereof was subject to the conditions recorded in the related order of the learned trial Court. The order sheet reflects that the petitioners had failed to take steps for issuance of the writ of Commission and eventually the prayer for further time to take steps was rejected on 10-5-2000. This order remained unchallenged. No application was filed before the learned Court below to recall the said order.

11. The learned Court below on a consideration of the materials on record was of the view that the boundaries of the decretal land and the land contained in the sale deed in question were not in conflict and accordingly the objection to that effect was rejected.

The above finding being one recorded by the learned trial Court on a consideration of the datas available on record, this Court sitting in revision is not inclined to reappraise the same to substitute its findings for those of the learned Court below. As a matter of fact in course of the hearing no endeavour was made

on behalf of the petitioners to point out the alleged inconsistencies.

11-A. In the above view of the matter, in my considered opinion, the impugned order cannot be said to be vitiated by any illegality far less by any error of jurisdiction.

The Revision Petition being without any merit is, therefore, dismissed.