
(1989) 08 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Revision Petition No. 571 of 1989

Smt. Dhapu and Others

APPELLANT

Vs

Nazar Ahmed and Others

RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1990) 1 WLN 188

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.C. Sharma, J.—Heard Mr. P.D. Mathur for the decree holders-petitioners and Mr. R P Garg for non-petitioner No. 3.

2. It was not disputed that the petitioners had obtained a decree for ejectment against non-petitioners No. 1 and 2, in Civil Suit No. 6/1987. In execution of that decree, possession of one out of the two shops was delivered to the petitioners on July 6, 1989. In relation to that, there is an application Under Order 21 Rule 99, CPC, filed by non-petitioner No. 3, which is pending. Possession of the other shop, in respect of which also a decree was passed, could not be delivered on account of the alleged unauthorised obstruction by non-petitioners. No. 3 and 4 on July 7, 1989. Non-petitioners No. 3 and 4 filed an application before the executing Court u/s 151, CPC, alleging that they were in possession of both the shops as owners under a registered sale-deed dated April 16, 1984, executed by non-petitioners No. 1 and 2 and Smt. Abiya Begam. They stated that it was settled position of law that if a stranger was in possession, he cannot be ejected in execution of the decree against judgment-debtors and the remedy of the decree-holder was to apply Under Order 21 Rule 97, CPC, complaining to the executing Court about the obstruction. It was prayed that the order for delivery of possession be stayed and the decree-holders be directed to take steps in accordance with Order 21 Rule 97, CPC. Upon this application, after perusing the

sale-deed alleged to have been executed in favour of non-petitioners No. 3 and 4, the Munsif directed for issue of notice to the decree-holders and the judgment-debtors and further a direction was ordered to be issued to the Nazir to maintain status quo in execution proceedings till further orders. This order of the Munsif, Tonk is challenged by the decree-holders in this revision.

3. The settled position of law is that when holder of a decree for possession is obstructed by a third party who is not bound by the decree, the holder of the decree may proceed Under Order 21 Rule 97, CPC, or he may apply again for execution of the decree Under Order 21 Rule 35, or Order 21 36, Civil Procedure Code, as the case may be, or he may institute a regular suit for possession. So far as the third party is concerned, he can only complain Under Order 21 Rule 99, CPC, when he is dispossessed, of his wrongful dispossession. Strangers cannot come to the Executing Court before they are dispossessed. Consequently, on the application filed by non-petitioners No. 3 and 4 u/s 151, CPC on July 7, 1989, the Executing Court had no jurisdiction to direct issue of notice of the application to the petitioners and non-petitioners No. 1 and 2 and further to direct the Nazir to maintain status quo in the execution proceedings. The impugned order deserves to be set aside. The Executing Court will keep in view the provisions contained in Order 21 Rule 35(1), CPC, which provides that where a decree is for delivery of any immovable property, the possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary by removing any person bound by the decree who refuses to vacate the property. Thus, in execution of the decree, only the person bound by the decree who refused to vacate the property, can be removed. Since there has been obstruction, the remedy of the decree holder is, alternative, by any of the three modes mentioned above.

4. With these observations, this revision petition is allowed. The order of the Munsif Tonk, dated July 12, 1989 is set aside.