
(2011) 04 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 385 of 2010

Smt. Kavita Arora

APPELLANT

Vs

Amit Arora and Others

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 35, Order 21 Rule 97, 47
Constitution of India, 1950 — Article 227

Citation : (2011) 04 SHI CK 0030

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Ahuja, J.—This is a petition filed by the Petitioner under Article 227 of the Constitution of India, for setting aside the order dated 18.10.2010 passed by the learned Rent controller (5), Shimla, in case titled as Amit Arora v. Vijay Mehra.

2. A notice of the petition was issued to the Respondents.

3. I have heard the learned Counsel for the parties and have also gone through the record of the case.

4. Briefly stated, the facts of the case are that Respondent No. 4 is the tenant and Respondents No. 1 to 3 are the owners of the rented premises. The eviction order was passed by the learned Controller which was affirmed upto this Court. This Court had stayed the execution of the order upto 30.9.2010 on the undertaking furnished by the tenant and subject to the condition that he shall deposit all the arrears of use and occupation and also to pay regular use and occupation charges on or before 10th of every month. The Decree Holders filed the execution petition alleging that the J.D. has committed default in payment of the use and occupation charges in violation of the conditions imposed by this Court and has thus rendered himself liable for eviction.

5. The J.D. filed objections u/s 47 CPC denying that he has committed the alleged default in regular payment of use and occupation charges. Meanwhile, the present Petitioner also filed objections under Order 21 Rule 97 CPC alongwith application under Order 21 Rule 101 CPC and Sections 47 and 151 Code of Civil Procedure, alleging that on 30.5.2005 i.e. during the pendency of the eviction petition. She had purchased the disputed premises from the Decree Holders vide registered sale deed allegedly duly executed by the Decree Holders. It was alleged that the Decree Holders had intentionally and deliberately concealed this fact from the Court and since the objector has become absolute owner of the premises, she is entitled to get possession from the J.D. The J.D. failed to deliver vacant possession as per the undertaking furnished by him before this Court and, therefore, an application was filed by the Decree Holders praying that the possession of the premises in dispute be ordered to be delivered to them. The objections filed by the present Petitioner were dismissed by the learned Rent Controller and the application filed under Order 21 Rule 35 Code of CPC by the Decree Holders was allowed. Being aggrieved by the said order passed by the learned Rent Controller, the present petition has been filed.

6. The submissions made by the learned Counsel for the Petitioner were that the Petitioner had purchased the suit property vide the sale deed duly executed by the Decree Holders through their Attorney and as such, she was entitled to get the possession on the basis of the said sale deeds. The said sale deeds had been challenged by the learned Counsel for the Decree Holders on the ground that the Power of Attorney i.e. husband of the Petitioner was not competent to execute the sale deed or that no sale deed was executed in regard to the property in question.

7. The submissions made by the learned Counsel for the Petitioner were that once a sale deed had been executed in favour of the Petitioner and she has become owner thereof and the sale deed was executed by a registered document to which presumption of truth is attached and as such, the Petitioner was entitled to possession of the tenanted premises. In support of his submissions, the learned Counsel for the Petitioner had placed reliance upon the following decisions:

Reliance was placed upon the decision of this Court in Anupam Coffee House Kandaghat and Another Vs. Ved Prakash Another, It was held in that case by this Court that the objections raised by the objectors in their objection petition are to be determined by the executing Court on its own merits. The objections had been filed by the objectors claiming that they were in possession of the property in dispute as tenants. The petition was allowed by this Court, which had directed the Court to decide objections in accordance with law and on their merits. According to the learned Counsel for the Petitioner, the objections cannot be summarily dismissed and these have to be decided on their merits.

Reliance was placed upon the decision in Rajeev Dutta and Others Vs. Punjab Wakf Board and Another, in which also it was held that no separate suit is to be

filed for the purpose of determining the questions relating to the right, title and interest in the property arising in a proceeding under Rule 97 Order 21 of the Code but the Court dealing with such proceedings has the jurisdiction to decide all such questions. The expression "shall be determined by the Court dealing with the application" makes the provision of the Rule mandatory. The Executing Court is thus required to go into the questions of "right, title or interest" raised in the proceedings under Rules 97 and 99. Since the inquiry under Rule 101 is a substitute for a suit to determine such questions, therefore, the inquiry under the rule will be treated as if it is a trial of the suit. Thus, the procedure as applicable to the trial of a suit, as far as practicable will have to be followed in an inquiry under the rule. In that case, the Appellants claimed that they are owners of the property in question by virtue of a Will. It was held that the executing Court could not and should not have proceeded to dismiss the objection petitions without affording an opportunity to the parties to prove the rival averments and that too in the absence of production and proof of the Will set up by the Appellate Court. It was held that the District Judge has thus rightly held that the executing Court did not hold the requisite enquiry into the question of title raised by Respondent No. 1.

Reliance was placed upon the decision in *Vimal Chand Ghevarchand Jain and Others Vs. Ramakant Eknath Jajoo*, wherein it was held that a registered deed of sale carries presumption that the transaction was a genuine one. If execution of sale deed is proved, onus is on Defendant to prove that the deed was not executed and it was a sham transaction.

Similar observations were made in *Abdul Rahim and Others Vs. SK. Abdul Zabar and Others*, relied upon by the learned Counsel for the Petitioner, in which it was also held that a registered document carries with it the presumption of its validity. Hence, a party challenging the genuineness of the registered gift deed must show that the transaction was not valid.

8. On the other hand, the submissions made by the learned Counsel for the Decree Holders were that the sale deeds in question were executed by the Power of Attorney and he had executed two sale deeds one in favour of the Petitioner and one in favour of his father. It was submitted by the learned Counsel for the Petitioner that the sale deed in question dated 30.5.2005 was executed through the General Power of Attorney, namely, Samir Arora, husband of the Petitioner. It was alleged that the Power of Attorney was executed on 14.1.2000 by Respondents No. 1 to 3, which was in regard to Flat No. 1 in Ground Floor of the building and the Khasra Nos. and the area was also mentioned therein measuring 357.54 Sq. Mtrs. It was submitted that this Power of Attorney was executed by the previous owners, but it was not in regard to the land comprised in Khasra No. 2047, which is the subject matter in dispute since the premises are situated on Khasra No. 2047 and as such, the Petitioner was not entitled to be substituted in place of the previous owners i.e. Respondents No. 1 to 3. On this point it was submitted by the learned Counsel for the Petitioner that this plea was never

taken that the subject matter of the suit property was situated on Khasra No. 2047 and that the Power of Attorney was not in regard to the disputed land and as such, this plea was not considered by the learned Rent Controller. Thus it was submitted that this plea is not open to be considered at this stage and it was never considered by the executing Court also. The learned Counsel for Respondents No. 1 to 3 had conceded this fact that this point was not specifically taken before the executing Court, but has been taken only in this Court. However, the contention put forth by the learned Counsel for the Respondents were that once the validity of the sale deed has been questioned and as to whether the Power of Attorney was competent and the sale deed pertained to the tenanted premises or not and until and unless all these questions are determined, the Petitioner was not entitled to be substituted as owner and she was not entitled to the possession thereof.

9. After considering the contentions put forth and the case law relied upon by the learned Counsel for the Petitioner, it is clear that all these questions in regard to the title are to be determined by the executing Court as a Civil court once an objection petition has been filed by the Petitioner and the same cannot be dismissed summarily as was held in the two decisions referred to above. Moreover, in case this consideration had not weighed with the learned trial Court that Khasra No. 2047 was involved or not, on which tenanted premises are allegedly situated, still the order passed by the learned Rent Controller can be considered as to whether it was valid or not. There is nothing to hold that once a registered document has been placed on record, it has to be accepted as correct since validity of the document in question and the validity of Power of Attorney has been questioned and this question has not been decided by any Court. Insofar as the submissions made by the learned Counsel for the Petitioner are concerned that in case the possession is delivered to the Decree Holders, the Decree Holders may change the nature of the suit property including dismantling it and as such, the possession should not be delivered to either of the two parties. I am not in agreement with this question since a perusal of the record as placed on record will show that the tenant is liable to hand over the possession since he had violated the undertaking furnished before this Court and due to this fight between the two owners, the tenant cannot be benefited and he had no right to retain the possession. Once a decree was passed as against him, he is liable to hand over the possession to the landlord in whose favour the decree was passed by the learned Rent Controller affirmed up to this Court. The possession cannot be held in abeyance and once the Petitioner is able to prove that she had stepped into the shoes of the landlord, the possession can be re-delivered to her. Insofar as the plea is concerned that the Decree Holders may not dismantle the property or change the property, it is for the Petitioner to file an appropriate application before the learned trial Court, who shall consider this question and pass appropriate orders when ordering the delivery of possession in favour of the Respondents/landlords. However, it is clear from the above discussion that the objections filed by the Petitioner could not have been summarily dismissed,

which are to be disposed of on merits by permitting both the parties to lead their evidence. A plea was also raised that a civil suit has been filed in this Court by the Respondents challenging the validity of the sale deeds in question and once that fact is brought to the notice of the Court by filing appropriate objections, it is for the said Court to decide the question as to the validity of the sale deeds and whether the objections petition is maintainable or not. That question is left open to be decided by the learned trial Court.

10. In view of the above discussion, the petition filed by the Petitioner is allowed and the impugned order is set aside dismissing the objections. The matter shall go back to the learned trial Court, who shall permit the parties to lead their evidence on the basis of the pleadings raised before it. A copy of the judgment alongwith record of the case be sent to the learned trial Court. In view of the disposal of the main petition, all the Miscellaneous application(s), if any, also stands disposed of.

11. Parties through their learned Counsel are directed to put up their appearance before the learned trial Court on 16th May, 2011.