
(2010) 05 JH CK 0081
In the Jharkhand High Court

Smt. Kewali Devi, Rohan Prajapati, Hiranman Sao and Jitan Sao APPELLANT

Vs

Smt. Sumati Devi and Others RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 151, 94

Citation : AIR 2011 Jhar 26

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Judgement

Prashant Kumar, J.—This civil revision is directed against the order dated 17.5.2005 passed by Sub-Judge-5th Hazaribagh in Execution Case No. 17 of 2000/Execution Case No. 09 of 2002, whereby and whereunder the Execution has been dismissed with observation that if the decree holder so desire, may file a fresh execution for recovery of costs.

2. It appears that the petitioners/decreed holders filed an application for execution of decree passed in Title Suit No. 79 of 1992 praying therein to eject judgment debtors from the suit properties, and Khas possession of the same be given to them. It appears that the said application was instituted as Execution Case No. 17 of 2000. During pendency of said Execution Case, another application u/s 94 read with Section 151 of the C.P.C. filed, stating therein that the judgment debtors are interfering with the right, title and interest of the decree holders and prevent them from cultivating, sowing and transplanting paddy seedlings over the suit land. Accordingly, it is prayed that appropriate order may be passed against the judgment debtors so that the decree passed by the court can be fully implemented.

3. It further appears that one more application filed on 19.9.2003, under order XXI Rule 32 of the CPC stating therein that judgment debtors were interfering with their right, title and interest over the suit land and not allowing them to cultivate and sow paddy crops. Therefore properties of judgment debtors be

attached and they may be sent to civil prison. The learned court below found that the decree was for declaration of title, confirmation of possession and permanent injunction. Thus in the present execution proceeding judgment debtors cannot be ejected from the suit properties, because confirmation of possession presupposes the possession of decree holder over the suit properties. The court below further finds that the application u/s 94 and order XXI Rule 32 of the CPC is; not maintainable. Accordingly, the execution case has been dismissed by the impugned order.

4. It is submitted by learned Counsel for the petitioners that the impugned order is bad in law because the judgment debtors did not appear and contest the instant proceeding. It is further submitted that the learned court below has exercised its jurisdiction not vested in it by denying to issue writ of delivery of possession. It is further submitted that the impugned order is bad because it is duty of the court to see that the decree of permanent injunction must be complied with by the judgment debtor. It is submitted that If the decree holder brought some facts to the notice of the court, from which it appears that the judgment debtors are violating the order of permanent injunction, then the court is duty bound to take all coercive steps against the judgment debtors. Accordingly, it is submitted that the impugned order cannot be sustained in this revision.

5. Having heard the submission, I have gone through the record of the case. As noticed above, the petitioner/decreed holder filed a suit for the following reliefs:

(I) Declaration of title over Schedule "A" as raiyats.

(ii) Confirmation of possession over Schedule "A" or in the alternative if the plaintiffs be dispossessed during the pendency of the suit then a decree for recovery of possession be passed by evicting the defendants from the suit lands.

(iii) Deleted v.o dt. 20.11.1987

(iv) Permanent injunction restraining defendants Nos. 1 to 4 and their man from coming upon the suit land;; or interfering with the possession of the plaintiffs.

(v) Cost of the suit.

(vi) Any other or further relief to which the plaintiffs may be found entitled.

The aforesaid title suit decreed on contest with cost. The right and title of plaintiffs declared over the suit land and their possession on the same was confirmed. The defendant Nos. 1 to 4 are permanently restrained also from going over the suit land and from interfering with the possession of the plaintiffs.

6. Thus, from perusal of relief claimed in the title suit it is clear that the petitioner/ decreed holder had prayed for declaration of title and confirmation of possession over the suit land described in Schedule-"A" to the plaint. The learned sub judge-V Hazaribagh on adjudication, came to the conclusion that the petitioners/decreed holders are in possession of the land, therefore he confirmed

the said possession as prayed by the petitioner/decreed holder, but surprisingly in the instant case petitioner/decreed holder prayed that judgment debtors be ejected from the suit property mentioned in Schedule-"A" to the plaint and thereafter khas possession of the same be given to them. It is well settled that the execution court cannot go behind the decree. If there is no decree directing the defendant/judgment debtor to deliver possession of the suit property the executing court has no power to pass any order of ejectment against judgment debtor. Thus, I find that learned court below rightly come to the conclusion that the prayer made in the execution application is beyond the decree, therefore same cannot be granted in this case. I find no illegality in the aforesaid finding of the court below.

7. It appears that two Interlocutory Applications filed by the petitioner/decreed holder in the aforesaid execution case. In my view, if the original application is dismissed as not maintainable then in that case interlocutory applications filed in the original case is also bound to be dismissed. Moreover from perusal of aforesaid interlocutory applications. I find that the petitioner/decreed holder alleged that judgment debtors were interfering with their possession over the suit land since 26.7.2000 and not allowing them to cultivate, sow or transplant paddy seedlings. The aforesaid allegation appears to be vague. It is worth mentioning that in the decree only defendant Nos. 1 to 4 have been restrained from going over the suit land and interfering with the possession of the petitioners/decreed holder. But in the aforesaid two applications the petitioners have not stated specifically as to which of the defendants interfered with their possession over the suit land and prohibited them from sowing and/or cultivating paddy crops. It is worth mentioning that in the execution case altogether 10 persons have been shown as defendants/judgment debtors. Thus, in the absence of any specific allegation against particular judgment debtors, their properties cannot be attached, nor they can be sent to civil prison. On that score also aforesaid two applications are not maintainable, therefore rightly rejected by the learned court below.

8. In the result, I find no merit in this civil revision, the same is accordingly, dismissed.