
(2011) 04 AHC CK 0341
In the Allahabad High Court
Case No : Writ C. No. 20098 of 2011

Smt. Laxmi Devi	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 101, Order 21 Rule 29, Order 21 Rule 97, Order 46 Rule 1, 115

Citation : (2011) 3 CivCC 718 : (2011) 8 RCR(Civil) 3156 : (2011) 113 RD 669

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—Heard Sri O.P. Lohia, learned Counsel for the Petitioner.

2. By means of the present petition, the Petitioner is challenging the order of the Additional District Judge, Jhansi, dated 23.3.2011 by which he has rejected the revision filed by the Petitioner against the order of the Civil Judge, Junior Division, Jhansi dated 18.10.2010 by which he has rejected the application filed under Order 21, Rules 97 and 101 of the Code of Civil Procedure.

3. The brief facts giving rise to the present case are that a suit being Suit No. 301 of 1966, for partition, was filed in respect of the properties detailed therein, which also included House Nos. 227 and 228. In the said suit, the Petitioner was also a party as a Defendant. The said suit was decreed and against the order of the Trial court, the appeal has also been dismissed. An Execution Case No. 01 of 2004 was instituted.

4. It appears that the Petitioner also filed a Suit No. 53 of 2010 for injunction in respect of the property being House Nos. 227 and 228 alongwith an application under Order 21, Rule 29 of the Code of Civil Procedure. The said application was rejected. The Petitioner filed Writ Petition No. 57186 of 2010 in this Court. This Court vide order dated 17.9.2010 has rejected the writ petition and made

following observations:

Heard Sri Om Prakash Lohia, learned Counsel for the Petitioner. The learned Counsel for Petitioner admits that the suit for partition in respect of the aforesaid properties was filed being suit No. 301 of 1966. He also admits that the present Plaintiff was one of the parties in the said suit. He also admits that after due contest the suit has been decreed. The decree passed in the said suit has been put to execution being case No. 01 of 2004. The grievance of the Petitioner is that certain issues were wrongly decided in the said suit and therefore, she has got a prima facie case to institute the present suit. After hearing the learned Counsel for the Petitioner at some length, this Court is of the opinion that filing of the present suit is nothing but a malafide action on the part of the Petitioner. In view of the fact that she was a party in the earlier suit No. 301 of 1966 and raised all the possible pleas thereon and in view of that fact the suit has been decreed, there is no justification to grant any relief to the Petitioner by invoking Order 21 Rule 29 Code of Civil Procedure. The two Courts below were right in rejecting the said application. It is really disturbing to note that the parties are fighting for the last about 40 years and this is high time that the decree passed in suit No. 301 of 1966 be executed. The executing Court is directed to proceed with the execution of the said decree forthwith and if necessary, the execution proceedings may go on day to day basis. The executing Court shall do good by satisfying the decree preferably within a period of two months from the date of production of certified copy of this order.

The writ petition is rejected. No order as to costs.

The Registrar General is directed to send a copy of this order to the District Judge, Jhansi to ensure the compliance of this order.

5. It appears that the Petitioner further filed an application under Order 46, Rule 1 of the CPC in the execution proceeding. The said application has been rejected on 11.6.2010 against which the Civil Revision Defective No. 125 of 2010 has been filed. The said revision has been dismissed summarily by this Court vide order dated 24.9.2010. Before this Court, the Petitioner pleaded that certain fraud has been committed by the Plaintiff. This Court observed as follows:

After hearing Shri O.P. Lohia, learned Counsel for the Petitioner at some length it is transpired that the suit for partition being original suit No. 301 of 1966 was filed which was decreed on 3.12.1998. Shri Lohia further informs the court that the said decree is put to execution and it is registered as execution case No. 01 of 2004. According to Shri O.P Lohia certain fraud has been committed by the Plaintiffs.

Be that as it may, that is not the subject matter before this Court. The only issue before this Court is whether the executing court rightly rejected the application filed by the judgment debtor to refer the dispute under Order 46 Rule 1 Code of Civil Procedure.

In view of the fact that the suit for partition has been decreed and the decree is under execution, no case for interference u/s 115 CPC against the impugned order has been made out.

The revision is dismissed summarily. The executing court shall proceed with the execution of the decree expeditiously and if necessary, it may take up the matter on day today basis and see that the decree is satisfied within the reasonable time say six months from the date of filing of this order.

6. Now, the Petitioner filed an application under Order 21, Rules 97 and 101 of the CPC on the ground that a partition had taken place in the year 1954 and after the partition, the Petitioner had purchased the property Nos. 227 and 228. It is submitted that the Plaintiff has concealed the fact of partition made in the year 1954 and, therefore, the decree has been obtained by fraud and since the decree has been obtained by fraud, it stands nullity. The said application has been rejected by the Civil Judge, Junior Division, Jhansi vide order dated 18.10.2010 against which the revision was filed, which has also been rejected by the impugned order dated 23.3.2011.

7. Learned Counsel for the Petitioner submitted that since the material fact, namely, that the partition had already taken place in the year 1954, has been concealed by the Plaintiff and the Petitioner has purchased the property in dispute by registered sale deed, therefore, the decree has been obtained by concealing fact and by fraud. Thus, the decree is nullity and cannot be executed. In support of the claim, reliance has been placed on several decisions of the Apex Court, which are enclosed alongwith the writ petition.

8. I do not find any substance in the argument of learned Counsel for the Petitioner. It is not in dispute that the Petitioner was the party in the Suit No. 301 of 1966 and it was open to the Petitioner to raise these pleas. Therefore, it cannot be said that the decree has been obtained by fraud. This Court in its order dated 17.9.2010 has observed that the Petitioner was the party in the suit and the Court was of the opinion that filing of another suit is nothing but a malafide action on the part of the Petitioner. The Court has further directed the executing court to proceed with the execution of the said decree forthwith. If necessary, the execution proceeding may go on day-to-day basis. In the order dated 24.9.2010, the plea of the Petitioner that the Plaintiff has committed fraud has also been considered and this Court has rejected the revision of the Petitioner and further directed the executing court to proceed for execution of the decree expeditiously and if necessary it may take up the matter on day-to-day basis and see that the decree is satisfied within the reasonable time, say, within six months from the date of filing of the order.

9. It appears that when the Petitioner failed to get the execution proceeding set aside or stayed, he has filed the application under Order 21, Rules 97 and 101 of the CPC just to delay the execution proceeding and circumvent the orders passed by this Court. The Petitioner was the party in the Suit No. 301 of 1966. It was

open to the Petitioner to raise all the pleas in the said suit. Therefore, it cannot be said that the decree has been obtained by fraud. From the conduct of the Petitioner, it appears that just to delay the execution proceeding, for one reason or the other, the Petitioner is filing suit and moving applications. This action of the Petitioner is not justified. I have perused the impugned order. In the impugned order, I do not find any error.

10. In the circumstances, the writ petition is dismissed summarily with the cost of Rs. 25,000/-