
(2000) 06 OHC CK 0004
In the Orissa High Court
Case No : Civil Revision No. 476 of 1999

Sri Jagadish Rai Puri

APPELLANT

Vs

Epari Bhaskar Patra and Others

RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:

Citation : (2000) 90 CLT 501

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.S. Das, B.R. Das, R.R. Mohanty, K. Behera and R.S. Modi, for the Respondent

Judgement

P.K. Misra, J.—The facts and circumstances giving rise to the present Civil Revision are follows:

The Petitioner had filed Original Suit No. 76 of 1980 against opposite party No. 1 in the Court of the Subordinate Judge, Bhubaneswar, for specific performance of contract in respect of the disputed property on the basis of an agreement dated 17-2-1997, whereunder the opposite party No. 1 had agreed to sell the property for Rs. 1,30,000/-. Initially, the suit was decreed ex parte in favour of the Petitioner, but the ex parte decree was set aside and the matter was remanded to the trial court for fresh disposal by the High Court. Thereafter, the trial court instead of passing a decree for specific performance of contract, passed a decree for payment of damages to the Petitioner, who filed First Appeal No. 348 of 1984. Ultimately, the said First Appeal was allowed with the following observations:

9. On the discussions in the foregoing paragraphs the appeal is allowed with cost, the judgment of the trial court rejecting the prayer for specific performance of contract of sale is set aside and the Plaintiff's suit for specific performance of contract of sale is decreed. The Defendant will submit application to the appropriate functionary of the State Government seeking permission for sale of the suit property to the Plaintiff within two months and on obtaining such

permission shall execute the sale deed within a month of receipt of permission.

The decretal dues of the Life Insurance Corporation against the Defendant shall be paid out of the sum of Rs. 1,34,502.32 which is stated to have been deposited by the Plaintiff in the trial court. If any further sum is required for clearing the decretal dues, the Plaintiff will deposit the same. If the Defendant fails to apply or to execute the sale deed, the learned Subordinate Judge will take necessary steps in the matter. If the State Government refuses to accord permission for the sale, the Plaintiff will be entitled to receive damages of Rs. 22,000/- as stipulated in the agreement with interest at the rate of 9% per annum from the date of institution of the suit.

Thereafter, Execution Case No. 44 of 1996 was initiated by the present Petitioner and as the said execution case remained in suspended animation, so to say, the Petitioner filed O.J.C. No. 10614 of 1998 seeking for a writ of mandamus to the Executing Court to expedite the execution case. Therein, this Court passed an order on 31-8-1998 directing the Executing Court to dispose of the execution proceeding within four months from the date of receipt of the order. Subsequently, on 18-11-1998, the Executing Court took up the matter. While rejecting the application of the present Intervenor for intervention in the execution case, the Executing Court passed an order to the following effect:

4. However, as this Court has been directed by the Hon'ble Court in O.J.C. No. 10614/98 to proceed in the execution proceeding ex parte as against the J. Dr. and the Hon'ble Court has observed in First Appeals No. 348 of 1984 that in case the J. Dr. fails to apply or execute the sale deed this Court is to take necessary steps, this Court has no option than to intimate the State Government through their Special Secretary, G.A. Deptt. by sending the copy of this order either to give permission for sale of the suit property to the D. Hr. or to refuse the same by 21-12-98, as it has been mentioned in the order of the Hon'ble Court in F.A. No. 348 of 1984 that if the State Government gives permission for sale of the suit property to the D. Hr. this Court will execute the sale deed in favour of the D. Hr. and in case the State Government refuses to accord permission for the sale of the suit property to the D. Hr. the D. Hr. will be entitled to receive damages of Rs. 22,000/- as stipulated in the agreement with interest at the rate of 9% per annum from the date of institution of the suit from the J. Dr. As the Hon'ble Court has directed this Court to dispose of this case within four months of receipt of their order, the State Government through its Special Secretary. G.A. Deptt. is impressed upon to do the needful by 21-12-98 positively. Put up on 21-12-98 for further orders. This may be treated as extremely urgent.

At this stage, the present Petitioner filed O.J.C. No. 18374 of 1998 for quashing the order dated 18-11-1996 and for issue of a writ of mandamus directing the Executing Court to finalise the sale deed in favour of the Petitioner without any further delay or awaiting reply from the G.A. Department. Such a prayer was made on the footing that the judgment Debtor had sought for permission to sell the land in favour of I.C. C.L., the present Intervenor. Thereafter, on the basis of

order dated 13-12-1999, the writ application had been converted to the present Civil Revision.

2. The Intervenor has objected to the prayer of the Petitioner. The Intervenor claim that at a stage when the first Appeal had been dismissed for default and no other litigation was pending, the Intervenor had entered into an agreement with the present opposite party No. 1 (defendant-Judgment Debtor) and had agreed to purchase the property without being aware of the previous litigation. The Intervenor claims to have improved the property after obtaining possession. It appears that the Intervenor has filed Original Suit No. 341 of 1993 for specific performance of contract, wherein the present opposite party No. 1 has been arrayed as Defendant No. 1 and the State Government has been arrayed as Defendant No. 2 and subsequently, the present Petitioner has been arrayed as Defendant No. 3. Subsequently, the Intervenor has also filed Title Suit No. 354 of 1997 against the present opposite party No. 1, the present Petitioner and the State of Orissa as Defendants 1, 2 and 3. In the latter suit, the present Intervenor has sought for a declaration that the judgment dated 30-8-1994 in First Appeal No. 348 of 1984 is not binding on the Intervenor and the said decree had been obtained collusively and for other reliefs including relief of permanent injunction.

3. It transpires that during pendency of O.J.C. No. 18374 of 1998, the State Government have refused to accord permission to sell the property to the present Petitioner and observed in the said letter that the application of the judgment Debtor to sell the property in favour of the I.C. C.L. shall be considered in future. It further appears that in the meantime, the execution case filed by the present Petitioner has been dismissed on 18-3-1999 for non-prosecution.

4. The Petitioner, who appeared in person, has raised the following contention:

(i) In view of the letter of the G.A. Department No. 12582, dated 12-10-1983, it should be taken that the Government had already agreed to accord permission for sale and no subsequent permission for sale was necessary,

(ii) In any case, assuming that subsequent permission was necessary, the Subordinate Judge should not have written a letter in ambiguous term requesting the Government to either accord permission or reject such permission and the Subordinate Judge should have simply written letter seeking for permission;

(iii) The State Government should be directed not to accord any permission for sale of the property in favour of the I.C. C.L.

5. The Petitioner may have some justification for criticizing the contents of the letter of the Subordinate Judge. As per the directions contained in the judgment of the High Court, the judgment Debtor was required to seek permission from the State Government to sell the property to the Decree Holder and the Executing Court was directed to take necessary steps in the event of failure of the judgment Debtor. In the present case, the judgment Debtor did not seek

permission for transfer of the property in favour of the Decree Holder pursuant to the direction from the High Court. Thereafter, the Executing Court has to take necessary steps which would mean that an application seeking for permission is to be made to the State Government. It is obvious that an Executing Court while executing a decree for specific performance of contract may be required to execute a sale deed if the judgment Debtor refuses to do so. In such a case, the Executing Court purports to act on behalf of the judgment Debtor. Applying the same logic, one would expect that while seeking permission the Executing Court also purports to act on behalf of the judgment Debtor. Obviously a judgment Debtor is not expected to write to Government seeking for permission by observing that the Government is free to reject the application for permission. Such a letter should be written in the form of seeking permission. Whether the Government is bound to accord permission is a matter which does not and cannot arise in the execution case.

However, fact remains that prima facie the language of the letter of the Subordinate Judge was improper. Be that as it may, it is not necessary to further go into such aspect in view of the fact that the Government has already refused to accord permission to the judgment Debtor to sell the property to the Decree Holder. Whether such refusal is valid or invalid cannot be decided by the revisional Court, even if the revisional Court happens to be the High Court. It is thus obvious that the Petitioner cannot challenge in this Civil Revision the validity of the subsequent letter of the Government refusing to accord permission and the Petitioner if so advised is to seek his remedy in proper forum. It is made clear that no opinion has been expressed regarding merits of the contentions raised by the Petitioner on this particular point.

Related question as to whether permission is necessary or not in view of the earlier letter of the Government in the year 1983, is again a matter which is to be considered by the Executing Court if and when such question arises.

6. The Intervenor has raised question that it has entered into an agreement bona fide at a stage when there was no litigation pending without being aware of the previous contract or the decision. Such question need not be decided in the present revision. On the own showing of the Intervenor, admittedly two suits have been filed and those two suits are to be decided by the competent Court in accordance with law.

7. It is, of course, true that in view of the subsequent dismissal of the execution case for default, the revision has practically become infructuous. However, it has become necessary to make the above observations as the question may again crop up in any fresh execution case, as law is well settled that even when an execution case is dismissed for default, the decree holder can initiate a fresh execution case subject, of course to the question of limitation and res judicata. If at all there is a fresh execution, whether such execution should await the result of the decision in the two suits is again a matter, which is to be decided by the Executing Court, or any other competent Court, as and when such question

arises.

8. Subject to the aforesaid observations, the Civil Revision is disposed of. There would be no order as to costs.

Revision disposed of.