

(1957) 03 PAT CK 0004
In the Patna High Court
Case No : A.F.O.O. No. 204 of 1953

Sri Sri Janardan Kishore Lal Singh Deo and Another	APPELLANT
Vs	
Girdhari Lal Sunda	RESPONDENT

Date of Decision : 08-03-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22
Limitation Act, 1908 — Article 181, 182

Citation : AIR 1957 Patna 701 : (1957) 5 BLJR 368

Hon'ble Judges : Sinha, J;Dayal, J

Bench : Division Bench

Advocate : R.S. Chatterji and N.N. Roy, for the Appellant; B.C. De and S.K. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—This appeal by the Judgment-debtors is directed against an order of the Court below directing delivery of possession to the decree-holder.

2. The decree-holder had brought a suit for specific performance of a contract of lease of certain property. The suit was decreed by consent on the 15th October, 1947, Execution Case No. 102 of 1948 was started on the 22nd September, 1948, on failure of the judgment-debtors to execute the lease. The lease was executed by the Court in March, 1949. On the 25th March, 1949, the decree-holder applied for delivery of possession, but that application was dismissed as premature, and on the 19th April, 1949, Execution Case No. 102 of 1943 was dismissed on full satisfaction, although no delivery of possession was given.

It was not surprising that delivery of possession had not been given because, though the document had been executed sometime in March, 1949. It had not been registered until the 23rd March, 1950. The delay was caused because the document had to be impounded as it did not bear sufficient stamp. On the 16th December, 1952, another execution petition was filed which was numbered as Execution Case No. 112 of 1952, and the prayer was to treat that application as

an application for revival of Execution Case No. 102 of 1948. This application, however, was rejected on the 7th January 1953 and on the 19th January, 1953, the present Execution Case No. 7 of 1953 was filed, and on the 30th June, 1953 the application was allowed.

3. Mr. Chatterji has submitted three points for our consideration.

(i) that no delivery of possession could be given because the decree did not provide for delivery of possession.

(ii) that the execution Case was barred by limitation because the previous Execution Case No. 112 of 1952 had been filed more than three years after the dismissal of the first Execution Case No. 102 of 1948. It was also urged in this connection that Article 182 and not Article 181 of the Limitation Act applied to this case; and

(iii) that the present application for execution was barred by the principles of res judicata.

4. In my opinion, there is no substance in any of these contentions. The suit, as I have said, was for specific performance of the contract for lease, and the relief for possession was inherent in that suit. It was pointed out in the case of Atal Behary Acharya Vs. Barada Prasad Banerji, , "that incidental to the relief to which the plaintiff is entitled in a decree for specific performance of a contract for sale, the Court has a right to grant possession of the property, and that a contract for sale includes not only the execution of the necessary document but also putting the vendee in possession of the property, and Mahomed Noor, J, who was a party to that judgment, made the following observation:--

"There is no doubt that the plaintiff's suit was for specific performance of contract of sale. It would have been quite enough for him if he would have simply prayed that the defendant be directed to specifically perform the contract for sale. If that relief was granted by the decree everything which was necessary for the contract to be specifically performed could have been ordered and enforced in the execution."

In that view of the matter, the point ought to be held concluded by that judgment. Mr. Chatterji, however, tried to submit that that judgment followed a previous judgment of this Court in Deonandan Prasad Singh v. Janki Singh 5 Pat. L. J. 314: (AIR 1920 Pat 89) (B), but the latter judgment was distinguishable. In my opinion, the case reported in Atal Behary Acharya Vs. Barada Prasad Banerji, , is similar to the facts of the present case, and we are bound by that decision. Even if we had no decision to guide us, there was no difficulty in holding that the relief of possession is inherent in a relief for specific performance of contract for lease. Mr. Chatterji also referred to a case reported in Dwijendra Narain v. Jogas Chandra De 39 Cal LJ 40: (AIR 1924 Gal 600)(C). In that case, the suit was one u/s 77, of the Registration Act where the only prayer was that the document be registered. That case, in my opinion, cannot possibly be any

guide to us to decide the question at issue in the present case.

5. From the dates which I have already indicated above, it is apparent that the present application for delivery of possession was made within three years from the date the document was registered. Before the document had been registered, the decree-holder had no right to be put in possession of the property leased; it was only when the document was registered that he got title to the property leased and to the possession thereof. In that view of the matter, the decree-holder could not possibly have got delivery of possession in the previous execution case. Mr. Chatterji is not correct when he says that Article 182 of the Limitation Act would apply. For the application of Article 182, it must first be found that any one of the six points of time specified in column 3 of the article applies or not.

If none of these six starting points of time applies as in this case it must be obvious that Article 182 has no application. *Sahul Hameed Rowther Vs. P.R.S.A. Arunachalam Pillai and Another*, , and I accept the decision of the Court below on that point and hold that Article 181 of the Limitation Act would apply to this case. According to that article, an application has got to be made within three years "when the right to apply accrues." In the present case the right to apply for delivery of possession did not accrue until the 23rd March 1950, when the document was registered. Therefore, in my opinion, the decision of the Court below on this point also is right, and the contention of Mr. Chatterji that Article 182 applies must be repelled.

6. So far as the question of *res judicata* is concerned, we have not got the proper materials on record to decide that question. It is true the question was raised in the objection, but it was not pressed at the time of the hearing of objection. The ordersheet of the previous execution case is not to be found on the records of this case. Mr. Chatterji, however, argued on the materials that were present in the paper book, and he submitted that, upon the application made by the decree-holder himself, he had filed an application on the 16th December, 1952, and that was dismissed. When he says that, he is only partially correct.

From page 3 of the paper book, it appears that the decree-holder had filed a petition on the 16th December 1952 which was numbered as Execution Case No. 112 of 1952 "for revival of the Ex. Case No. 102 of 1948" and that application was dismissed. So what was dismissed was the application for revival of the first Execution Case No. 102 of 1948; that dismissal cannot possibly be held to decide the question whether the decree-holder was or was not entitled to delivery of possession. That being the position, in my opinion, there is no question of *res judicata*. Mr. Chatterji referred to the case of *Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others*, .

In that case, however, the facts were entirely different, and cannot possibly give us any aid in deciding the present question. The question of *res judicata* depends upon the pleadings and the judgment. In the present case, as I have already

said, materials are not on record and whatever materials there are they indicate that the question of delivery of possession was not decided by the executing Court at any time previously after the decree-holder had been entitled to possession, that is to say, after the date the document was registered.

7. In the result, the appeal fails, and it must be dismissed with costs.

Dayal, J.

8. I agree.