
(2008) 02 AHC CK 0036
In the Allahabad High Court

Vijay Kumar Pandey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, Order 9 Rule 13

Citation : (2008) 2 AWC 1588

Hon'ble Judges : V.M. Sahai, J; R.N. Misra, J

Bench : Division Bench

Judgement

V.M. Sahai and R.N. Misra, JJ.—By way of this writ petition, the petitioner has sought the relief restraining the respondents No. 1, 2 and 3 from interfering with his possession over the disputed land. Further, it has been prayed that the order dated 5.7.1997, passed by the respondent No. 3 be treated as non est and assess the cost of construction demolished by the respondents and pay damages to the petitioner.

2. We have heard Shri R.C. Shukla, learned counsel" for the petitioner and Shri Lalji Sinha, learned Counsel for the respondents.

It appears from the record that the petitioner purchased a piece of land from the respondent No. 4 Mohd. Haneef through a sale deed dated 13.8.1993, a photo copy of which is Annexure-2 to the writ petition. The respondents No. 1 to 3 claimed this land to be their own. Mohd. Hanif had filed a suit in the year 1992 before the Civil Judge (S.D.), Allahabad bearing Original Suit No. 29 of 1992 against the respondents No. 1 to 3 and that suit was decreed ex parte on 15.9.1993. The operative portion of the judgment is quoted below:

The plaintiffs suit is hereby decreed ex parte with cost against the defendants. The defendants are restrained from interfering with the possession of the plaintiff from the disputed property in suit or demolishing his construction, which details described at the foot of the plaint.

3. Since the present petitioner purchased the same property bearing plot No.

841/1 of Khasra No. 285 situate in village Purey Surdas, Pargana Jhusi, Tehsil Phoolpur, district Allahabad from Mohd. Hanif, respondent No. 4, therefore, the judgment passed by learned Civil Judge (S.D.), Allahabad in the aforesaid suit binds him also and since the present respondents No. 1 to 3 were parties to that suit, that judgment is also binding upon them. The learned Counsel for the respondents No. 1 to 3 has contended that the decree passed by civil court is without jurisdiction, therefore, that is not binding upon the respondents No. 1 to 3. This contention of the learned Counsel for the respondents is not sustainable because the decree has been passed by the civil court and the respondents No. 1 to 3 neither got it set aside under Order IX. Rule 13, C.P.C. nor by getting adjudicated by the appellate court. Unless and until a decree is set aside by the competent court that is binding upon the parties to the suit.

4. The order dated 5.7.1997, passed by respondent No. 3, which is Annexure-11 to the writ petition is against the decree passed by the civil court. If this order is acted upon, it will amount to the disobedience of the decree passed by the civil court. In our opinion when the petitioner has got a decree of civil court in his favour and permanent prohibitory injunction has been issued against the respondents No. 1 to 3, the only course open to the petitioner is to apply under Order XXI, Rule 32 of the Civil Procedure Code. There is provision in the aforesaid Rule for punishing the party concerned for disobedience of the decree of injunction passed by the civil court. The mode of punishment as given in the Rule is detention of the person concerned in civil prison or attachment of his property or both. Sub-rule (4) of Rule 32 referred to above says that if the Judgment-debtor obeys the decree and pays all the cost of the execution etc. within six months from the date of attachment, the same shall be released. Since the effective remedy has been provided under the CPC for enforcement of the decree and punishing the person disobeying it, therefore, this writ is not maintainable. With the above observations, we dismiss this writ petition.

No order as to costs.