
(2005) 04 OHC CK 0037
In the Orissa High Court
Case No : Writ Petition (C) No. 1927 of 2005

Youth Club

APPELLANT

Vs

Premalata Kumari Devi and Others

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29
Constitution of India, 1950 — Article 227

Citation : AIR 2005 Ori 190 : (2005) 2 CivCC 750 : (2005) 99 CLT 764 : (2005) 1 OLR 558

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : D.P. Dhal, for the Appellant; M. Kanungo, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The ambit of Order 21, Rule 29 of the CPC is the question to be determined in this Writ Petition. For proper appreciation, Order 21, Rule 29 is quoted herein-below :

"29. Stay of execution pending suit between decree-holder and judgment-debtor.

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing."

A reading of the above provision would show that discretion has been given to the executing Court to grant stay of execution if a suit is pending between the decree-holder and judgment-debtor in the same Court. The question is, what are the circumstances under which the executing Court has to exercise the discretion

to grant stay. Though no hard and fast rule can be laid down as to under what circumstances stay under Order 21, Rule 29 CPC should be granted or refused. Courts are required to adopt a rigorous test and appreciate the facts and circumstances of each case before doing so.

2. The fundamental consideration is that when a decree has been passed by a Court in favour of a party he should not be, unless there is extraordinary circumstances, deprived of enjoying the fruits of the decree except for good reasons. It is well settled that a decree remains in force until it is set aside and it should not be lightly dealt with on the basis of surmises and conjectures that in the suit filed subsequently the same may be set aside. A person should not be deprived of the fruits of the decree merely because of suits of frivolous character are instituted. The decree must be allowed to be executed and stay should not be granted as a matter of course. Even if stay is granted, it must be on suitable terms, so that the earlier decree is not stiffered. This view gets fortified by a decision of this Court in the case of *Judhisthir Jena v. Surendra Mohanty*, reported in AIR 1969 Orissa 233.

3. The Patna High Court in the case of *Subash Kumar v. Sheo Balak*, AIR 1976 Patna 307, held that the principles which govern stay of execution in general ought to be principles which would govern stay of execution under Order 21, Rule 29 CPC. The petitioner is required to make out sufficient cause. Such cause is said to have been established if the party is able to prove that he would incur substantial loss; that there are fairly arguable questions; and that the petitioner has come without delay.

Though no Court has exclusively laid down the principles on which stay is to be granted under Order 21, Rule 29 CPC, a cumulative reading of all the decisions would lead to an irresistible conclusion that a party has to establish substantial cause and sufficient reasons.

4. In the touch-stone of the aforesaid principles, let us now examine the facts of the present case.

The present opposite parties as plaintiffs had filed Title Suit No. 19 of 1980 in the Court of the Subordinate Judge (now Civil Judge, Senior Division), Bolangir inter alia praying for declaration of their right, title and interest over the disputed land and for other ancillary reliefs. The present petitioner which is a Club was the sole defendant and was represented through its Secretary, one Shyamadhar Sethi. The defendant appeared before the Court below, filed its written statement and contested the suit. The suit was decreed on contest by the judgment dated 21.6.1990 and the decree was sought to be executed in Execution Case No. 18 of 1994. No appeal having been filed against the judgment and decree of the said suit, the same became final and binding. During pendency of the said Execution Case, the petitioner Club filed another suit, being numbered as Title Suit No. 20 of 2002 in the Court of the Civil Judge (Senior Division), Bolangir praying to declare its right, title, interest and possession over the suit land; to set aside the

earlier decree passed in T.S. No. 19 of 1980; for permanent injunction and other ancillary reliefs. Thereafter petition was filed by the petitioner Club before the executing Court to stay further proceedings of the aforesaid Execution Case. The executing Court after appreciating the facts and circumstances of the case, being not satisfied that there was sufficient reason to stay the execution case, rejected the petition filed under Order 21, Rule 29 CPC. The said order of rejection of the prayer for stay is assailed in this Writ Petition.

5. Learned counsel for the petitioner forcefully submitted that as the suit filed is pending, further proceedings of the Execution Case should be stayed. According to the petitioner, if the Execution Case proceeds, the Club house would be demolished and possession of the land would be delivered to the defendants of the said suit. As such the suit filed by the petitioner Club would become infructuous and the petitioner Club would suffer irreparable loss.

6. Relying upon a report said to have been submitted by late Justice G.C. Das, a retired Judge of this Court, the petitioner's counsel forcefully submitted that in a Commission set up by the State Government, Justice Das had submitted a report wherein he had observed that the present opposite parties had no semblance of right, title or interest over the disputed land and the same belonged to State. According to the learned counsel for the petitioner, the Subordinate Judge, Bolangir while disposing of T.S. No. 19 of 1980 did not consider the said report and thus the decree is vulnerable in law.

7. Mr. Kanungo, learned counsel appearing for the opposite parties, at the other hand forcefully submitted that the report submitted by Justice Das was not binding upon the Civil Court. At best it could be dealt with as a piece of evidence. According to him, the present petitioner who has filed Title Suit No. 20 of 2002 has absolutely no locus standi and the said suit is liable to be dismissed in limine, inasmuch as the defence taken by the present petitioner in the earlier suit and the averments in the plaint of the 2002 suit filed by the petitioner are almost identical. It is further submitted that the plaintiff in Title Suit No. 20 of 2002, as would be evident from the averments made in the plaint, has no right, title or interest over the disputed land, inasmuch as even according to the plaintiff the land belongs to State and, as such the suit of the year 2002 is not maintainable. Mr. Kanungo further submits that the decree passed in T.S. No. 19 of 1980 has not been assailed by any of the parties and, as such, the same has become final and binding and the present opposite parties who were plaintiffs in that suit should not be prevented from enjoying the fruit of the decree passed in the said suit.

8. I have heard learned counsel for the parties at length and perused the documents meticulously. The suit has been filed after lapse of twelve years. Even, according to the petitioner which was defendant in T.S. No. 19 of 1980 and is plaintiff in T.S. No. 20 of 2002, the disputed land belongs to State, According to the petitioner, the present opposite parties have no right, title or interest over the disputed land as it belongs to State. On the other hand, in the suit filed by

the present petitioner, it has prayed for declaration of its right, title and interest over the disputed land. Having admitted the State as the paramount owner of the disputed land, it having not impleaded the State as a party to the suit, no efficacious adjudication can be made. But then this opinion is only prima facie. As the suit is pending, any opinion expressed in this Writ Petition may affect the interest of the parties. Therefore, this Court refrains itself from expressing any opinion on merit of the suit.

9. The petitioner Youth Club was the defendant in S.T. No. 19 of 1980. It was represented through its Secretary. It not only appeared in the suit, but also contested the same by filing written statement and adducing its evidence. The contested decree passed in the suit against it has not been assailed by the Club for about a decade. Therefore the said decree has become final and binding against it. No substantial variance is noticed on a comparison of the written statement filed in T.S. No. 19 of 1980 and the plea taken in the plaint of T.S. No. 20 of 2002. In view of the aforesaid facts, this Court finds that the present petitioner has failed to establish that there are sufficient reasons and that balance of convenience tilts in its favour and it has a prima facie case. Therefore, the Court below has rightly rejected its petition filed under Order 21, Rule 29 CPC.

10. After going through the impugned order, I do not find any infirmity or illegality therein as the Court below has taken into consideration all the facts and circumstances of the case. While exercising jurisdiction under Article 227 of the Constitution of India, law is well settled that this Court does not sit in appeal over an order passed by the Court below. The petitioner has failed to satisfy this Court that the Court below has committed any error of law apparent on the face of the record and has mis-interpreted or has not-considered any material which would substantially affect the conclusion arrived at. I am, therefore, not inclined to interfere with the impugned order and dismiss this Writ Petition.