

Party Name : M/S RAJAT TRADING & ORS Vs THE STATE BANK OF INDIA & ORS

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THE HONBLE MR. JUSTICE S.TALAPATRA

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Heard Mr. B. Banerji, learned counsel appearing for the appellants.

This is an appeal under section 100 of the CPC against the judgment and order dated 11.08.2014 delivered in Civil Misc Appeal No.06 of 2013.

The fact which is required as the perspective to understand the controversy attached to this appeal is that the appellant was added as the proforma-defendants meaning, there was no relief against the appellants in the suit being Title Suit No. 23 of 2010. The suit was decreed. The appellants have stated that the suit land as prescribed in the plaint did not cover the land which was under their possession. The said decree in the course of time was put into execution. While executing the decree, a part of the land where the appellants were in possession was also taken as the decreetal land on dispossessing the appellants therefrom and the same was handed over to the decree holder.

Being aggrieved by such action, the appellants had filed an application under Order XXI, Rule 100 of the CPC for restoration of their land as they have been dispossessed during the execution.

The Executing court by the order dated 26.09.2013, delivered in Civil Misc. Appl. No. 39 of 2012 has rejected his application mainly on two grounds viz:

1. Since the appellants have failed to prove their valid title, the possession cannot be restored.
3. This application was no filed within the period of limitation.

Being aggrieved by that order dated 26.09.2013, as it amounts to be decree in view of the Order XXI, Rule 103 of the CPC the appellants filed first appeal which was registered as Civil Misc. Appeal No. 06 of 2013. The said appeal was dismissed by the impugned judgement and order.

This appeal is admitted on the following substantial questions of law:

**(i) Whether it is the title that has to be proved for seeking restoration or it is the possession that has to be proved for purpose of showing dispossession to be within the ambit of Order XXI, Rule 100 of the CPC?**

**(ii) Whether the finding as returned by the executing court that since the possession was acquired by the appellants by way of unregistered deed the provisions of Order XXI, Rule 100 of the CPC cannot be applied even if the appellants are dispossessed during the execution, is sustainable or not?**

Issue notice.

Call for the records.

Since Mr. D.R. Choudhury, learned counsel appears and accepts the notice for the respondents No.2 to 5 and Mr. P.Dutta, learned counsel appears and accepts the notice for the respondent No.1, no formal notice needs be issued on those respondents. But Mr. Banerji, learned counsel appearing for the appellants shall furnish a copy of the memorandum of appeal to Mr. Choudhury and Mr. Dutta learned counsel in the course of the day.

The appellants shall take steps for service of notice on the remaining respondents by registered post with A.D. within a week from today.

List the appeal for hearing in its usual turn.