

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 576 OF 2018

Binod Brahmachari @ Binod Ch. Petitioners
Pradhan and others

Mr. Suresh Chandra Mohanty, Advocate
-versus-

Monalisha Mohanty and others Opp. Parties

Mr. Bibekananda Bhuyan, Advocate
for Opposite Party Nos. 1 and 2

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
29.07.2022

Order No.

9. 1. This matter is taken up through hybrid mode.
2. This CMP has been filed assailing the order dated 16th March, 2018 (Annexure-3) passed by learned Civil Judge (Senior Division), First Court, Cuttack in Execution Case No. 93 of 1999, whereby he allowed an application for impletion of parties, who have purchased the property during pendency of the said execution case.
3. Mr. Mohanty, learned counsel for the Petitioners submits that final decree passed by learned Civil Judge (Senior Division), First Court, Cuttack in T.S. No. 183 of 1992 has been put to execution in Execution Case No. 93 of 1999. During pendency of the execution proceeding, the Opposite Party Nos.1 and 2 filed an application with a prayer to be impleaded as decree holders (for short 'D.Hrs.')
- on the ground that they have purchased the suit property put to execution. The Petitioner Nos.1 to 4 (Judgment Debtors) filed objection to the said petition stating that the petition for intervention being filed under Order I

Rule 10 read with Order XXII Rule 10 C.P.C. is not maintainable as the provisions are not applicable to an execution case. It is further submitted that the procedure enumerated under Order XXI Rule 16 C.P.C. was not followed before filing an application for intervention by Opposite Party Nos.1 and 2. Learned executing Court without considering the objection raised by the Petitioners in its proper prospective has passed the impugned order, which is under challenge in this CMP.

3.1 It is his contention that there is no material on record to show that the decree has been assigned by the D.Hrs. to the intervenors (Opposite Party Nos.1 and 2). No notice whatsoever was given to the transferor as well as Judgment Debtors (for short 'J.Drs.') before filing an application for intervention. The Procedure laid down in Order XXI Rule 16 C.P.C. is mandatory in nature. Any deviation from the said procedure certainly vitiates the so-called assignment of the decree. These legal aspects were lost sight of by the learned executing Court while adjudicating the petition. Hence, the impugned order is not sustainable in the eyes of law and the same is liable to be set aside and the petition for intervention filed by Opposite Party Nos.1 and 2 is liable to be dismissed.

4. Mr. Bhuyan, learned counsel for the Opposite Party Nos.1 to 6 submits that the contention of Mr. Mohanty, learned counsel for the Petitioners is not sustainable in law. It is his submission that during pendency of the execution proceeding, the Opposite Party Nos.1 and 2 purchased the suit property from D.Hrs (Opposite Party Nos.3 to 6). In view of provision under Section 55 of the Transfer of Property Act, 1882, the deed of

transfer of the property attaches with it the interest and liabilities in the property. Although a special deed of assignment was not executed between the D.Hrs. and transferee (Opposite Party Nos.1 and 2), but the deed of transfer itself includes assignment of the decree. It is his submission that filing of an application for intervention itself is a notice to the J.Drs. and D.Hrs., who are already parties in the execution case and copies of the petition have been served on them. The objection to the said petition has already been filed. Hence, there is no infirmity in observing the formalities/procedure provided under Order XXI Rule 16 C.P.C. In support of his contention, he places reliance on the decision in the case of ***Dhani Ram Gupta and others –v- Lala Sri Ram and another***, reported in AIR 1980 SC 157, wherein the Hon'ble Supreme Court at paragraph-4 has held as under:

“4. We are unable to read Order 21, Rule 16 as furnishing any foundation for the basic assumption of the learned Counsel for the respondent that property in a decree does not pass to the transferee under the assignment until the transfer is recognized by the court. Property in a decree must pass to the transferee under a deed of assignment when the parties to the deed of assignment intend such property to pass. It does not depend on the court's recognition of the transfer. Order 21 Rule 16 neither expressly nor by implication provides that assignment of a decree does not take effect until recognized by the court. It is true that while Order 21 Rule 16 enables a transferee to apply for execution of the decree, the first proviso to Order 21 Rule 16 enjoins that notice of such application shall be given to the transferor and the judgment-debtor and that the decree shall not be executed until the court has heard their objections, if any, to its execution. It is one thing to say that the decree may not be executed by the transferee until the

*objections of the transferor and the judgment-debtor are heard, it is an altogether different thing to say that the assignment is of no consequence until the objections are heard and decided. The transfer as between the original decree-holder and the transferee is effected by the deed of assignment. If the judgment-debtor has notice of the transfer, he cannot be permitted to defeat the rights of the transferee by entering into an adjustment with the transferor. If the judgment-debtor has no notice of the transfer and enters into an adjustment with the transferor before the transferee serves him with notice under Order 21 Rule 16 the judgment-debtor is protected. This in our view is no more than plain good sense. In *Dwar Buksh Sirkar v. Fatik Jali* [ILR 26 Cal 250, 253, 254] , the decree-holder represented to the Court that the judgment-debtor had satisfied the decree by payment and wanted his execution application to be disposed of accordingly. Before satisfaction could be recorded a transferee of the decree from the original decree-holder intervened and claimed that satisfaction could not be recorded as there was a valid transfer of the decree in his favour prior to the alleged payment by the judgment-debtor to the original decree holder. The argument before the High Court was that the assignee could not prevent the recording of the satisfaction of the decree as he had not filed an execution application and got the assignment in his favour recognised. The High Court of Calcutta observed:*

“The only provision in the Code referring expressly to the assignment of a decree is contained in Section 232, and that no doubt contemplates a case in which the assignee applies for execution. In such a case the court may, if it thinks fit, after notice to the decree-holder and the judgment-debtor, allow the decree to be executed by the assignee. If, however, there is an assignment pending proceedings in execution taken by the decree-holder, I see nothing in the Code which debars the Code from recognizing the transferee as the person to go on with the execution. The recognition of the court is no doubt necessary before he can execute the decree, but it is the written assignment and not the recognition

which makes him the transferee in law. The omission of the transferee, if it was an omission, to make a formal application for execution, was merely an error of procedure and does not affect the merits of the case.... It is argued for the respondent that the transferee's title was not complete as express notice of the transfer had not been given to the judgment-debtor. As already observed, the transfer, as between transferor and the transferee, is effected by the written assignment. If the judgment-debtor had no notice of the transfer and being otherwise unaware of it paid the money to the decree-holder, the payment was, of course, a good payment, and he cannot again be held liable to the transferee."

We express our agreement with the observations made by the Calcutta High Court."

4.1 He also relies upon the decision in the case of **Ramakanta Das –v- Gita Devi Choudhury**, reported in AIR 1991 Orissa 279 and submits that the facts of the said case are somewhat akin to the facts and circumstances of case involved in the said case law. While adjudicating the matter, this Court at paragraph-7 has held as under:

“7. xxx xxx xxx

Thus considered from any angle, neither the executability of the decree nor the locus standi of the original decree-holder or the transferee can be said to have been adversely affected in the facts and circumstances of the case. The Executing Court was therefore not right in deleting the name of the decree-holder from the proceeding. While allowing the application of the transferee to intervene in the proceeding, he should have allowed the decree-holder to continue the proceeding. In that case, the present objection raised by the judgment-debtor would not have been available and delay in execution of the order could have been avoided."

4.2 He also relies upon the decision in the case of **Mstt. Sarwari Begum –v- Nazir Ahmed and others**, reported in AIR 2003 Calcutta 230, in which it is held that '*mere transfer of property was not a transfer of decree. The executing court was bound to allow execution at the instance of the recorded decree holders, unless the transferees should come in under Order 21, Rule 16 of the Code of Civil Procedure.*' Learned executing Court while adjudicating the matter has discussed the contention of the intervenors-Opposite Party Nos.1 and 2 as well as the objection raised by the Petitioners-J.Drs.. Relying upon the decision in the case of **Ramakanta Das** (supra), the petition for intervention was allowed. The Petitioners are no way affected by such impletion. Thus, there is no infirmity in the impugned order under Annexure-3. Hence, he prays for dismissal of the CMP.

5. Taking into consideration the rival contentions of the parties and on perusal of the materials on record including the case laws cited, this Court finds that T.S. No. 183 of 1992 was filed for partition. The suit was decreed on compromise. Final decree has also been passed allotting the land in question to the D.Hrs. Subsequently, Execution Case No.93 of 1999 has been filed, which is pending before learned Civil Judge (Senior Division), First Court, Cuttack. During pendency of the execution case, the D.Hrs. sold the property put to execution, to the Opposite Party Nos.1 and 2 by virtue of a registered sale deed. Pursuant to the said registered sale deed, the D.Hrs. have already mutated the land in their name. It is not disputed that no deed of assignment of the decree is executed between the D.Hrs.

(transferors) and the purchasers-Opposite Party Nos.1 and 2 (Transferees). A deed of assignment is meant for transfer of interest in the decree to the assignee. But, non-execution of the deed of assignment of the decree does not make the transfer of property invalid. By virtue of such deed of transfer, the Opposite Party Nos. 1 and 2 acquired interest in the property. Thus, they filed an application for intervention to be impleaded as D.Hrs. The purpose of filing such an application was to protect their interest in the property. They also never prayed to delete the name of the original D.Hrs. in the execution case. Thus, they essentially prayed to add them as D.Hrs. along with the original D.Hrs. In the facts and circumstances of the case, it can be safely concluded that the case of Opposite Party Nos. 1 and 2 is not based on assignment of decree, but on a claim that they have acquired interest in the property by virtue of the sale deed executed by D.Hrs. Thus, the rigors of Order XXI Rule 16 C.P.C. is not applicable to this case, as the Opposite Party Nos. 1 and 2 never claimed that the decree has been assigned to them. It further appears from the impugned order that the executing Court has only directed to implead the Opposite Party Nos. 1 and 2 as parties to the execution proceeding. No direction to delete the names of the original D.Hrs. has been issued in the impugned order.

6. There is no material on record to show that the J.Drs. are prejudiced by impletion of the Opposite Parties to the case at hand. Thus, the ratio in *Ramakanta Das* (supra) is applicable to the case at hand.

7. In view of the discussions made above, I find no infirmity in the impugned order under Annexure-3. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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