

Item No. 55
19.02.2024
Court. No. 19
GB/S. Biswas

C.O. 866 of 2023

Sri Kashi Nath Mantri & Ors.
Vs.
Sri Narayan Chandra Ghosh & Anr.

Mr. Partha Pratim Roy,
Mr. Susenjit Banik,
Mr. Saptarshi Basu,
Ms. Sutapa Mukhapadhyay,
Mr. Mrinal Saha,
Ms. Jesmin Khatun,
Ms. Pinki Singh

...for the Petitioners.

Mr. Supratick Syamal

...for the Opposite Party.

1. The revisional application arises out of an order dated January 13, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Barrackpore in Miscellaneous Case No.23 of 2013. Misc. Case No. 23 of 2013 arose out of Title Execution Case No.50 of 1989. The decree-holder/opposite party no.1 put the decree into execution. Such decree was passed by the learned Additional District Judge, North 24 Parganas at Barasat on January 31, 1989 in Title Appeal No.145 of 1987.
2. By the order impugned, the learned court rejected an application for local investigation, as also the misc. case, on the following grounds:-
 - a) Section 47 of the Code of Civil Procedure was entertainable by the executing court if such application related to execution, discharge or satisfaction of the decree. The executing court was

not required to decide the questions which were brought up by the petitioners with regard to the identity of the suit property.

- b) On careful perusal of the records and the judgment and decree passed in the title appeal, the court held that the petitioners had invited the court to go beyond the decree, which was not permissible.
 - c) The conduct of the judgment debtors was not trustworthy and they only tried to stall the proceedings.
 - d) Earlier, an application under Order 21 Rules 98 to 101 of the Code of Civil Procedure along with an application under Order 39 Rule 7 of the Code of Civil Procedure for local inspection had been filed. The said proceedings being Misc. Case No.15 of 2002 was dismissed for default. The points for local inspection in the said application were similar to the points for local investigation. Thus, the petitioners did not have any right to challenge the executibility, discharge or satisfaction of the decree, once again on the self-same cause.
3. Mr. Roy, learned advocate appearing on behalf of the petitioners submits that the learned court failed to consider that the scope of the application under Order 21 Rules 98 to 101 of the Code of Civil Procedure and the application for local inspection filed therewith, were different from the scope of an application under

Section 47 of the Code of Civil Procedure and an application for local investigation.

4. According to Mr. Roy, the earlier dismissal of the misc. case for default, would not operate as res judicata. Next, Mr. Roy submits that if the suit property or the decreetal property were not identifiable, in that case, the decree could neither be satisfied nor discharged. The local investigation was required in aid of the execution in order to demarcate the construction on the southern part of the premises.
5. Referring to the written statement, Mr. Roy submits that the specific case of the defendant was that the suit property had two structures when he was inducted as a tenant. The construction was pre-existing and as such, identification of the portion in respect of which the decree has been passed, was essential in order to put the decree into execution.
6. Mr. Roy further submits that the tabular statement mentioned the entire plot and not the suit property. According to Mr. Roy, this is a fit case for interference by the Court by appointing an advocate commissioner for local investigation in order to demarcate the 200 sq. ft. more or less in the southern side of the premises as per the schedule of the plaint.
7. He relies on the decision of the Hon'ble Apex Court in the matter of ***Hindustan Petroleum Corporation Ltd. versus Ajay Bhatia*** reported in ***AIR 2022 SC 4739***. The said judgment has been relied upon in

support of the contention that it was the cardinal duty of the executing court to satisfy itself with regard to the identification of the property which was sought to be recovered in execution of the decree. He referred to paragraph 51, which is quoted below:-

“51. There could be no doubt that a decree should not to the extent practicable be allowed to be defeated. At the same time, a decree can only be executed in respect of the suit property if the suit property is easily identifiable. The extent of the suit property would have to be determined by the Executing Court, as a question relating to executing, discharge or satisfaction of the decree.”

8. Mr. Syamal, learned advocate appearing on behalf of the decree holders submits that the court should take into consideration the unfortunate plight of the decree holders. The suit was filed in 1978. The suit was decreed by the appellate court in 1989 by judgment and decree dated January 31, 1989. The decree was put into execution in 1989. Various attempts were made by the judgment debtor to frustrate such decree. A proceeding under Order 21 Rule 98 to 101 of the Code of Civil Procedure was dismissed. Prayer for local inspection was made in the said proceeding, on the ground that the decretal property was not identifiable. Again, on the self-same issue, an application under Order 47 of the Code of Civil Procedure was filed after 23 years from the date when

the decree was put into execution. Another application was filed for local investigation on the same plea that the decreetal property could not be identified.

9. Mr. Syamal has taken the court through the judgment and decree passed by the learned appellate court and the orders passed by the learned executing court, in order to demonstrate the conduct of the judgment debtors who wanted to stall the execution.
10. Having heard the learned advocates for the respective parties, this court finds that the suit is for recovery of possession of the schedule property, upon demolition of the structure, which was allegedly raised by the defendant.
11. According to the plaint case, the plaintiff purchased 2 cottahs 30 sq.ft. of land in 148/1 Feeder Road, Calcutta-56 Police Station Belghoria under Kamarhati Municipality, from one Samir Kumar Roy Choudhury. The said property contained a tile shed hut in the northern portion with darma walls comprising a room divided in two parts. The said portion was rented out to the defendant at a monthly rent of Rs.33/-. Notice was sent to the defendant both by the plaintiff and his vendor.
12. The plaintiff had to travel for his professional reasons and when he went back to the property on July 1, 1979, he found that the defendant illegally and surreptitiously and without any sanction plan

constructed another tile shed with darma walls on about 200 sq.ft. of land in the southern portion of the premises in question. A sketch map of the property was also attached to the plaint. According to the plaintiff, the hut on the southern portion should be demolished and the plaintiffs should be granted a decree for recovery of possession of the said portion.

13. On the other hand, in the written statement, the defendant has categorically stated that he was occupying the said premises in which there was pre-existing rooms, one on the northern side and another on the southern side with adjoining land of premises no.364/1, Feeder Road, Calcutta, Kamarhati Municipality. Samir Kumar Roy Choudhury, the vendor had inducted the defendant as a tenant in respect of both the rooms on the said premises. The contention was that the plaintiff had constructed two rooms, one in the northern side and the other in the southern side and inducted the tenant in respect of both the structures. The said structures were constructed in order to prevent the refugees from East Pakistan from taking illegal possession of the land in question. The allegation of construction of the hut in the southern side was false and mischievous and invented by the plaintiff with dishonest motive, only to enter the premises by evicting the defendant. From the plaint, I find the schedule of the suit property has

been specified with description and there is no ambiguity.

14. Considering the defence case, it does not appear that there is any mistake or confusion with regard to the identification of the property. The defendant in the written statement has categorically stated that both the structures, one in the northern side and the other in the southern side were pre-existing. Thus, the defendant was aware of what was allegedly tenanted to him, as per his own version. He did not have any difficulty in identifying the two structures in the written statement.
15. In this suit, recovery of possession of the schedule property has been sought for, upon demolition of structure which is mentioned as 200 sq.ft of land more or less in the southern portion of 148/1 Feeder Road.
16. The schedule is quoted below:

Schedule

“All that 200 square feet of land be the same a bit more or less in the southern portion of 2 cottahs 3-sq.ft. of land under R.S. Khatian Nos.2203, 2214 and 2234 Dag No.1305/2646 Mouja Belghoria being premises no.148/1 Feeder Road, Calcutta – 56, Belghoria in the district of 24 Pgs. Under the Kamarhatty Municipality, on which a tiled hut has been erected by the defendant bounded on all sides by

the vacant land of the plaintiff as delineated in the sketch plan attached herewith.”

17. According to the judgment and decree passed by the learned appellate court in the title appeal, there is a clear finding that the defendant was inducted in respect of the one structure and the suit premises originally consisted of one structure. The record of rights and the rent receipts were looked into by the learned court. Those documents recorded that there was only one structure in the premises at the relevant time. Thus, the court concluded that the defendant had constructed the structure on the southern side. The defendant cannot shy away from such finding as the construction was within his knowledge and at his instance, as per the judgment and decree.
18. The deposition of the PW2, i.e., the vendor of the plaintiff and the erstwhile landlord of the judgment debtors was also carefully considered by the learned appellate court and the learned appellate court held that there was cogent evidence that the defendant had constructed the structure on the southern side.
19. Under such circumstances, this court does not find any reason to interfere with the order impugned, as the identity of the property was never in doubt. The defendant was always aware of what was the actual state of affairs.
20. The decision of the Hon’ble Apex Court in the matter of Ajay Bhatia (Supra) will not help the petitioners. In

this case, there is a clear distinction between the two structures, one in the northern side and other in the southern side. The defendant himself has stated that the structure was pre-existing. Under such circumstances, nothing remains to be decided in this application. The defendant can easily identify the structure.

21. This court has supplied elaborate reasons as to why the order impugned is justified. Although the reasons of the learned court may not be entirely happy, the conclusion is correct.
22. The revisional application thus stands dismissed. There shall be no order as to costs.

(Shampa Sarkar, J.)