

D/L.41.
December 23, 2024.
MNS.

SMAT No. 12 of 2019
+
CAN 2 of 2019 (Old CAN 12768 of 2019)

Sri Anil Kumar Samanta and others
Vs.
Smt. Chaina Bhattacharjee and another

Mr. Buddhadev Ghoshal,
Mr. Sailesh Kumar Gupta,
Ms. Ankita Mondal

... for the appellants.

1. The present Second Miscellaneous Appeal has been preferred against a judgment of concurrence by the Executing Court as well as the First Miscellaneous Appellate Court.
2. The matter arises out of an application filed by the present appellants under Section 47 of the Code of Civil Procedure (in short "the Code"), in which the appellants claimed that although the eviction suit was filed against one Ajay Kumar Samanta, on his demise, Akhil Kumar Samanta, only one of his heirs, was substituted in his place, whereas the other applicants, who are also heirs of late Ajay Kumar Samanta (the original defendant), were left out from the array of parties.
3. During pendency of the matter, the said application was converted into one under Order XXI Rules 97 to 101 and accordingly adjudicated.

4. During arguments before the Executing Court, the appellants took a plea that the tenancy stood in the name of a partnership firm whereas the decree was passed only against an individual, who was one of the partners thereof.
5. It is argued by learned senior counsel for the appellants that both the courts below overlooked the fact that the tenancy stood in the name of a partnership firm and that all the heirs of late Ajay Kumar Samanta were not impleaded.
6. However, we are unable to impress ourselves to the effect that any substantial question of law is involved in the appeal.
7. First, the arguments regarding the decree being bad, since it was the partnership firm which was the actual tenant as opposed to Ajay Kumar Samanta in his individual capacity, is a case which is beyond the pleadings made in the application under Section 47 of the Code.
8. Secondly, in the event such question is sought to be reopened, it would tantamount to the Executing Court going behind the decree, which is barred by all notions of prevalent jurisprudence in India.
9. That apart, the Executing Court came to categorical findings that the appellants failed to produce any rent receipt in their name. Documents of possession, including certificate of enlistment, were produced only in the name of Akhil Kumar Samanta (the substituted

defendant / judgment debtor) and as such, it was accepted by the Executing Court that Akhil Kumar Samanta was the tenant in whose name the decree was rightly passed.

10. That apart, the pleadings of the appellants in the Section 47 application and their arguments are mutually contradictory, insofar as the former pleads only the non-impleadment of the original defendant Ajay Kumar Samanta as a ground, without a whisper of any partnership firm being the tenant, whereas the contrary was argued during the hearing of the application under Section 47 of the Code, converted to one under Order XXI Rules 97 to 101.

11. That apart, even if one of the heirs of the original judgment-debtor, being a joint tenant, was impleaded in the suit, the estate of the joint tenancy was sufficiently represented. In such circumstance, it cannot be said that the decree was a nullity, and as such inexecutable within the purview of Section 47 of the Code.

12. The appellants having failed to claim any independent title, but having claimed their non-impleadment as heirs of the original defendant, step into the shoes of the judgment-debtor and as such, are not strangers coming within the ambit of Order XXI Rules 97 to 101.

13. Insofar as Section 47 application is concerned, as discussed earlier, there is no case made out of inexecutability of the decree on the ground of nullity.

The ground of all heirs of the original defendant not having been substituted would have been fit to be raised in a regular appeal against the original decree which, not having been preferred till date, the eviction decree has attained finality.

14. That apart, the appellants also seek to argue that the trial Court had no jurisdiction to invoke Order XVII Rule 2 of the Code while passing the eviction decree, as reflected from the judgments of the Executing Court and the First Appellate Court, which also goes to the root of the decree and as such, it is beyond the jurisdiction of the Executing Court to go behind the decree to decide such issue.

15. Moreover, there are concurrent findings of fact of both the executing court and the first appellate court to the effect that although trade licence and telephone bill were in the name of M/s. Kumar Samanta and Co., but the certificate of enlistment stood in the name of Akhil Kumar Samanta, the judgment-debtor, and previously electricity bills stood in the name of Ajay Kumar Samanta, the original defendant. There were no rent receipts or any proof of possession in favour of the present appellants to have justified their claim of any independent title to the decretal property.

16. Thus, the decisions arrived at concurrently by both the courts below were plausible views on the strength of the materials on record and it is well-settled that the second appellate court ought not to substitute its own

views for that of the courts of first instance or first appellate court merely because the same is possible.

17. In such view of the matter, we find that no pure question of law, let alone any substantial question of law, has been made out in the present appeal for the purpose of admission of the appeal.

18. Accordingly, SMAT No. 12 of 2019 is dismissed under XLI Rule 11 of the Code. Consequentially, CAN 2 of 2019 (Old CAN 12768 of 2019) is also dismissed.

19. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)