

February 26, 2025
Sl. No.541
Court No.6
s.biswas

CO 3518 of 2024

Ashok Kumar Sen and others
vs.
Sudsons Private Limited and others

Mr. Shaktinath Mukherjee, Sr. Adv.
Mr. Kasinath De
Mr. Sandip Kumar De
Mr. Abhikchitta Kundu

... for the petitioners

Mr. Ashok Banerjee, Sr. Adv.
Mr. Partha Sarathi Deb Barman
Mr. M. Nazar Chowdhury
Ms. Debangana Dey Nayak

... for the opposite party no.1

This application under Article 227 of the Constitution of India is at the instance of the decree holders and is directed against the order dated September 7, 2024 passed by the learned Civil Judge (Senior Division), 2nd Court at Barasat in Misc. Case No.95 of 2022 arising out of Title Execution Case No.19 of 2019. By the order impugned, the learned executing court fixed 16th November, 2024 for hearing the petition under Section 47 of the Code of Civil Procedure. Written objection to such application was directed to be filed in the meantime.

Mr. Mukherjee, learned senior advocate appearing for the petitioners, submits that the predecessors of the petitioners and the proforma opposite parties granted lease of the property for 30 years in favour of the opposite party no.1, which was extended for another 10 years. On expiry of the said lease, suit for recovery of khas possession and

mesne profits was filed. Such suit was decreed by judgment and decree dated 28th August, 1989. An appeal against such order was dismissed by the learned first appellate court by judgment and decree dated 22nd February, 1992. The matter was carried before this Hon'ble Court in the second appeal which was ultimately dismissed by an order dated 19th May, 2017. The decree was put into execution. While the petitioners were attempting to take possession of the decreetal property by executing decree, the seal bailiff was resisted from delivering possession. In the meantime, the opposite parties preferred a special leave petition before the Hon'ble Supreme Court against the judgment passed in second appeal which was however dismissed by an order dated 9th January, 2023.

Mr. Mukherjee, learned senior advocate, further submits that the misc. case under Rule 208 of Civil Rules and Orders was filed by the petitioners praying for police help and such misc. case was adjourned from time to time and in the meantime the opposite party no.1 filed an application under Section 47 of the Code of Civil being Misc. Case No.94 of 2024.

Mr. Mukherjee further submits that the grounds taken in the application under Section 47 of the Code of Civil Procedure is two fold. Firstly, that the property cannot be identified and secondly, the

land whereupon the judgment debtors are in possession is recorded in khatian no.1 and therefore, the decree cannot be executed in respect of such land.

Mr. Mukherjee further submits that the application under Section 47 of the Code of Civil Procedure is a frivolous application. He submits that this Hon'ble Court in exercise of its jurisdiction under Article 227 of the Constitution of India can take up hearing of the application under Section 47 of the Code of Civil Procedure and decide the same. In support of such contention, he placed reliance upon the decision of the Hon'ble Division Bench of this Court in the case of *Mira Banik & Anr vs. Smita Bhattacharyya & Ors* reported at (2004) 1 CHN 261.

He submitted that this court should decide the application under Section 47 instead of relegating the parties before the learned Executing Court and in support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra)* reported at (2020) 7 SCC 366.

With regard to the objection taken in the application under Section 47 of the Code of Civil Procedure that the decree cannot be executed as the judgment debtors are in possession of the property which has been recorded in khatian no.1, Mr.

Mukherjee submits that the decree holders/petitioners have obtained a decree against the judgment debtors after proving their title to the property and merely by saying that the property has been recorded in khatian no.1 cannot be a ground for holding that the decree is not executable. He submits that the judgment debtors, in the application under Section 47 of the Code of Civil Procedure, have not claimed title through the State. He submits that when the petitioners have obtained a decree, the judgment debtors, in order to succeed in their application under Section 47, have to show that they have better title in themselves or they must trace their title through a third party. In support of such contention, he placed reliance upon the decision in the case of *Ganshamdoss Narayandoss vs. Gulab Bi Bai* reported at *The Law Weekly*, 1927 at page 697.

With regard to the other objection that the property is not identifiable, Mr. Mukherjee drew the attention of this court to the schedule of the plaint and submitted that the property is bounded by the municipal drain on the north, south and east and by Jessore Road on the west. He further submits that the decreetal property is identifiable by municipal holding number. He thus submits that the objection of the petitioners taken in the application under

Section 47 that the property is not identifiable is also without any basis.

He submits that the boundaries given in a deed must prevail over the area. He further submits that where boundaries are vague and indefinite, the area should prevail and where boundaries are specified and definite the land that is the subject matter of a particular instrument must be the land within those specified boundaries. In support of such contention, he placed reliance upon the decision of this court in the case of *Bhola Nath Chattopadhyay vs. Mrityunjay Chattopadhyay & Ors* reported at *AIR 1934 Cal 851*.

Per contra, Mr. Banerjee, learned senior advocate appearing for the opposite parties, submits that a decision is an authority for what it actually decides and what is the essence in a decision is its ratio and not every observation found therein nor what logically flows from various observations made in the judgment. He further submits that one additional or different fact may make a world of difference between conclusions in two cases. In support of such contention, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of *State of Rajasthan vs. Ganeshi Lal* reported at *AIR 2008 SC 690*.

Heard the learned advocates for the parties and perused the materials placed. On a query of the

court, Mr. Kasinath De, learned advocate appearing for the petitioners, submits that the written objection to the application under Section 47 of the Code of Civil Procedure has already been filed. The learned advocates for the respective parties uniformly submits that 1st March, 2025 has been fixed for hearing of the application under Section 47 of the Code of Civil Procedure. At this stage, it would be relevant to note the observations of the Hon'ble Supreme Court in the order dated 9th January, 2023 passed in Special Leave to Appeal (C) Nos.24280-24282/2022, wherein the Hon'ble Supreme Court observed as follows:

“Upon hearing the counsel the Court made the following

ORDER

Head learned senior counsel appearing for the parties.

We do not find any reason to interfere with the order(s) assailed in these petitions.

The present petitions are, accordingly, dismissed with costs of Rupees One Lakh as in our opinion there has been abuse of the process of Court by the petitioner(s).

On consent of the parties, the costs so imposed shall be deposited to the National Legal Services Authority within a period of four weeks from today.

Pending application(s), if any, shall stand disposed of.”

This court finds that the Hon'ble Supreme Court imposed costs of Rs.1 lakh and opined that there has been an abuse of the process of court by the petitioners therein i.e. the opposite parties herein.

As submitted by the parties, the application under Section 47 of the Code of Civil Procedure is otherwise ready for hearing and the date for hearing of such application has been fixed on 1st March, 2025. In view thereof this court is not inclined to take up the hearing of application under Section 47 of the Code of Civil Procedure and decide the application on merits which is pending before the learned executing court.

This court, therefore, feels that the ends of justice would be subserved if a direction for expeditious disposal of Section 47 application is passed.

The learned Civil Judge (Senior Division), 2nd Court at Barasat is requested to take up the hearing of the application under Section 47 of the Code of Civil Procedure on the next date fixed i.e. on 1st March, 2025 and dispose of the same expeditiously without granting any unnecessary adjournments to either of the parties and by a reasoned order. If for some reason the hearing of such application cannot be concluded on that date, the learned Executing Court is requested to take up the said application for hearing on consecutive dates subject to the convenience of the learned executing court and to dispose of the same as expeditiously as possible

without granting any unnecessary adjournments to either of the parties.

It is however made clear that this court has not gone into the merits of the objections raised in the application under Section 47 of the Code of Civil Procedure and the parties will be at liberty to raise all points before the learned Civil Judge (Senior Division), 2nd Court at Barasat, at the time of hearing of such application and the learned Executing Court shall decide such points without being influenced by any observations made by this court in this order.

With the above observations and directions, CO 3518 of 2024 stands disposed of. There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.)