

SUPREME COURT OF INDIA

Pushpawatibai

Vs.

Ratansi

C.A.No.86 of 1960

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.)

06.12.1962

JUDGEMENT

GAJENDRAGADKAR, J. :

1. This appeal by special leave raises a short question about the correctness of the view taken by the Division Bench of the High Court of Nagpur that the application made by the respondents to claim mesne profits from the appellants was valid in law. The learned single Judge of the said High Court who heard the matter in the first instance had rejected the application on the ground that it was incompetent in law. In the Letters Patent Appeal against the said judgment that conclusion has been reversed and the matter has been sent back to the executing Court for determinations of the mesne profits awardable to the respondents.

2. On August 22, 1909 one Rustamrao sued Dinkarrao Rajurkar and others for partition of the joint family property (Civil Suit No. 26 of 1909). Dinkarrao Rajurkar who subsequently died is the husband of the first appellant and the father of appellants 2-5. In execution of the decree passed in the said suit, a plot of land along with other property was allotted to the share of Dinkarrao. When Dinkarrao sought to obtain possession of the said plot in execution, he was resisted by the respondents, but by an order passed on August 28, 1930, the respondents were directed to remove their obstruction and to deliver possession of the land to Dinkarrao. Accordingly on September 29, 1930. Dinkarrao was put in possession.

3. Then followed a suit filed by the respondents under O. 21, R. 103, C. P. C. (Civil Suit No. 113 of 1931). This suit was subsequently renumbered as 36-A/1937, and was ultimately decreed on April 29, 1940. In substance, the decree declared that the respondents were entitled to possession of the plot in suit together with the buildings thereon at the date of their dispossession by the order passed on August 28, 1930 and it directed Dinkarrao to deliver possession of the property to the respondents.

4. Dinkarrao then preferred first appeal No. 54 of 1940 in the High Court against the said decree and pending the final disposal of the said appeal, he prayed that the execution of the decree for possession should be stayed. The High Court granted stay by an order passed on June 28, 1940 "provided that the appellant furnished adequate security for costs as well as mesne profits accruing from the date of the decree to the date of delivery of possession in case the appeal fails." Security was accordingly furnished and execution of the decree was stayed.

5. On December 10, 1946, the appeal was dismissed on the merits. In the result, the decree passed by the trial Court in favour of the respondents was confirmed. Thereafter, Dinkarrao applied to the High Court for a certificate for appeal to Privy Council and renewed his prayer for stay of the execution of the decree until disposal of the appeal by the Privy Council. This application, however, was not allowed. In due course, the appeal came to be heard by this Court and was dismissed.

6. On April 8, 1947, the respondents made an application under O. 21, R. 11 (2) of the Code for execution of the decree passed in Civil Suit No. 36-A/1987. By this application, they claimed delivery of possession of the property specified in the decree and mesne profits by way of refund of rent collected by the Judgment-debtor, Dinkarrao from 29th April 1940 to the date of delivery of possession. The claim for mesne profits thus made by the respondents was resisted by Dinkarrao. Pending these proceedings, Dinkarrao died on November 1, 1949, but the appellants who are his legal representatives were brought on the record on January 9, 1951 and they renewed the plea made by Dinkarrao that the claim for mesne profits was incompetent. The executing Court upheld this plea and rejected the respondents' claim for mesne profits. On appeal, the said claim has been allowed and the decree passed by the Letters Patent Bench in that behalf has brought the appellants to this Court by special leave.

7. The only contention which Mr. Agarwala for the appellants has raised before us is that the procedure adopted by the respondents in claiming mesne profits is not warranted by law. He concedes that the order passed by the High Court in granting stay in appeal required Dinkarrao to furnish security for mesne profits as well as costs, and that undoubtedly gives the respondents a right to claim mesne profits and imposes a corresponding liability on the appellants to pay mesne profits from the date of the decree to the date of delivery of possession. The only argument is that this claim can be enforced either by a suit or by an application properly made to execute this order itself. He said that present application has been made to execute the decree passed in the appeal on the merits and since the said decree does not award mesne profits, it is not competent to, the respondents to claim mesne profits by way of executing the said decree. In our opinion, this contention is purely technical and has been rightly rejected by the Letters Patent Bench. The execution application no doubt purports to obtain execution of the decree passed in appeal No. 54 of 1940 on December 10, 1946: but the record shows that after objections were filed to the said application by the judgment-debtor Dinkarrao, the respondents offered an explanation and in doing so, they set out the order passed by the High Court in granting stay and made it clear that it is by virtue of the said order that they were making the claim for mesne profits. In substance, therefore, the respondents were claiming mesne profits by virtue of the order passed by the High Court in granting stay to Dinkarrao. The only point and the technical objection raised by the appellants is that a separate application for execution with adequate Court fees stamp should have been filed to execute the order passed by the High Court on the stay application as such and that since that prayer has been made in an application by which the decree itself is sought to be executed, the said prayer should be treated as incompetent. In our opinion, having regard to the explanation filed by the respondents, it is quite clear that the respondents were seeking to execute the decree so far as possession was concerned and were asking for mesne profits under the stay order granted by the High Court. The execution application filed by them can, therefore, be treated as a composite application asking, for execution both of the decree and the stay order. That, in substance, is the view taken by the High Court and we see no reasons to interfere with it.

8. The result is the appeal fails and is dismissed with costs.

Appeal dismissed.