Bhanwar Lal

Vs

Prem Lata and Others

Civil Appeal No. 81 of 1990

(Ranganath Misra, P.B. Sawant, K. Ramaswamy JJ)

12.01.1990

JUDGMENT

K. RAMASWAMY, J. -

1. Heard learned counsel for both sides and special leave is granted.

2. This appeal by the auction-purchaser is against the judgment of the High Court Rajasthan, Jaipur Bench, dated March 7, 1989 made in S.B. Civil (Misc.) Second Appeal No. 2 of 1976. The facts, though many relevant to dispose of the appeal are stated as under :

3. S/Shri Gokulchand and Rekhchand, respondents 5 and 6 herein, defendants 2 and 3 in O.S. 37 of 1959 on the file Court of the Civil Judge, Jhalawar, obtained in another suit, an ex-parte money decree to recover Rs. 5557.10 against Bal Mukund and brought to sale the joint family house which is the disputed property in the present litigation. Mohanlal, his minor son and his widow filed objections under Order XXI Rule 58 CPC which were rejected. The sale was confirmed on October 24, 1958, and sale certificate was issued on November 28, 1958. The objectors filed O.S. No. 37 of 1959 under XXI Rule 63 CPC to set aside the sale.

4. The trial court by its judgment dated December 5, 1961 dismissed the suit, but on appeal, the District Judge at Kotah allowed the appeal and decreed the suit for restitution of the plaint schedule property since possession had, in the meantime, been taken. Second Appeal No. 91 of 1965 files in the High Court abated as a whole since Mohanlal died on May 1, 1968 and his legal representative being respondents 2 to 4 were not brought on record to substitution. When execution was levied for restitution, though the appellant raised several objections to its executability but challenge was confined to two ground, namely, the decree passed by the District judge is a nullity as he lacked pecuniary jurisdiction to entertain the appeal against the decree in the suit admittedly valued at Rs. 15,000 under Section 21(1)(a) of the Rajasthan Civil Courts Ordinance, 1950, and it was entertianble by the High Court, and secondly, the decree being a declaratory one was incapable of execution, notwithstanding the direction for restitution of the plaint sheduled property. The executing court dismissed the objection petition, but on appeal the order of the executing court was reversed. On further appeal the High Court allowed the same, set aside the appellate order and directed the appellate court to transfer it to the appropriate civil court for execution as per law. As against it the present appeal has been filed.

5. The contention that the decree passed by the District Judge, Kotah, on appeal is a nullity is devoid of substance. It is true that under section 21(1)(a) of the Rajasthan Civil Courts Ordinance, 1950. The District court is empowered to entertain an appeal against the decree of a trial court of the value

only up to Rs. 10,000 and by operation of sub section (b) of Section 21 (1) the appeal would lie only to the High Court as the value of the suit was admittedly Rs. 15,000. But this is a suit laid under Order XXI Rule 63 CPC to set aside the sale by declaring the decree of Rs. 5557.10 to be invalid and does not bind them. In Radha Kunwar v. Reoti Singh (AIR 1916 PC 18 : 43 IA 187 : 18 Bom LR 850) and Phul Kumari v. Ghanshyam Misra (35 IA 22 (PC) : ILR 35 CAL 202) it was held that the value of the amount of decree is the value for the purpose of the suit under order XXI Rule 63 CPC. Therefore, merely because the valuation of the property sold in execution had been put at Rs. 15,000 the valuation of the suit under Order XXI Rule 63 CPC cannot be treated to be that valuation. Accordingly, we hold that Section 21(1)(a) of the Ordinance is attracted. Therefore, the decree of the appellate court in C.A. No. 157 of 1961 on the file of the Court of the District Judge, Kotah, is not a nullity.

6. The only other question is whether the plaintiff is entitled to restitution of the property. Once the decree which was the subject matter of execution was declared to be not binding on the plaintiffs, Mohanlal and his mother Bhuli Bai, the execution sale would not bind them and as a result they became entitled to restitution. The decree does admittedly contain a direction for restitution. Therefore, it is not a mere declaratory decree but coupled with a decree for restitution of the plaint scheduled house. Accordingly, the decree is executable.

7. To a question put by the court whether in view of the long pendency of the proceedings it would not be equitable that the appellant should pay the proper value of the house or deliver possession thereof, the learned counsel for the appellant fairly stated that whatever amount be fixed by this Court, the appellant is prepared to pay the same. The learned counsel for the respondents on the other hand relying upon the statement made in the objections dated April 28, 1973, filed by the appellant maintained that he had then claimed only a sum of Rs. 11,900 in all, and the appellant would be entitled only for that amount, On the other hand, the appellant having been in possession and enjoyment of the property, the respondents are entitled to the mense profits. On the facts and in the circumstances and in consideration of the fact that the litigation is pending for a long period, we are of the view that justice and equity would be met if we direct the District Court, Kotah, to assess the prevailing market value of the plaint scheduled house and the site as on date and direct the appellant to pay the value thereof within a time to be fixed by him. If the respondents have not drawn the balance of the sale amount in the original suit filed by S/Shri Gokulchand and Rekhchand after full satisfaction was recorded, the appellant is entitled to withdraw the said balance amount. In case the amount was already withdrawn, the appellant is entitled to deduct the same from the amount fixed by the District Court. In case the appellant fails to pay the value of the property assessed by the District Court as directed above, there shall be a direction for restitution of the plaint scheduled property as per the decree of the appellate court in C.A. No. 157 of 1961. The appeal is accordingly allowed, but, in the circumstances, without costs.

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