

Gopalan Vijayan

Vs

Kunchanadhan Reveendran and Another

Civil Appeal No. 5292 of 1992

(L.M. Sharma, K. Jayachandra Reddy, S. Mohan, N. Venkatachala JJ)

08.12.1992

JUDGMENT

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K. JAYACHANDRA REDDY, J. –

1. Heard both sides. Special leave granted.

2. The appellant is the assignee decree-holder in O.S. No. 293 of 1974 on the file of Munsif's Court. Respondent 2 is the decree-holder and respondent 1 is the judgment-debtor. Respondent 2 filed the original suit for recovery of the shop rooms with arrears of rent and the same was decreed and he applied for execution. Meanwhile respondent 1 filed an appeal against the decree and obtained stay. The appeal was dismissed giving two months' time to surrender the shop. The decree however became final and the pending execution petition was posted for September 4, 1976 on which date respondent 2 also produced a copy of the appellate court decree dismissing the appeal. Thereafter the execution petition was adjourned to November 4, 1976. On October 6, 1976 respondent 2, however, filed petition for advancing the posting of the execution petition and the same was advanced to October 18, 1976 for objections and for delivery. Respondent 1 the judgment-debtor who had the notice of the date of posting did not appear on October 18, 1976 and the executing court ordered delivery on October 19, 1976 and the delivery was effected on the same day. Respondent 1 however filed execution application for redelivery on the ground that he had no notice of the advanced posting of the execution petition and the delivery was ordered and effected without notice to him behind his back and that there was violation of principles of natural justice. The trial court dismissed the said petition holding that there was valid and final decree for recovery of possession in favour of the plaintiff namely respondent (sic 2) and that advancing the date of hearing of the execution petition without giving notice to him was only at the most an irregularity which did not vitiate the entire execution proceedings. Respondent 1, however, filed civil revision petition in the High Court which by its order dated August 3, 1988 allowed the same on the ground that the order of delivery was passed without notice to the judgment-debtor and it resulted in violation of principles of natural justice and it accordingly set aside the order of delivery and remanded the case to the executing court for de novo consideration. After the said remand the trial court allowed the petition filed by respondent 1 and directed the re-delivery of the decree schedule shop. Hence the present appeal.

3. Learned counsel for the appellant submitted that the decree has neither been varied nor reversed and that the same has become final and therefore respondent 1 is not entitled to restitution and that this is a case where the High Court should not have interfered invoking its inherent jurisdiction

under Section 115 CPC. Learned counsel further contended that the delivery of possession was ordered pursuant to the valid and final decree and that the judgment-debtor was also fully awarded that eviction proceedings will be taken against him by the decree-holder and that mere advancement of the hearing of the execution petition without giving notice to him, is only an irregularity which does not vitiate the entire execution proceedings. Learned counsel for respondent 1, the judgment-debtor, however submitted that in law the delivery without notice to him is not a mere irregularity but it is an illegality and the appellant can take delivery of the possession of the properties only after disposal of the execution petition in accordance with law namely after giving due notice to the judgment-debtor.

4. It is not in dispute that the decree of the trial court is neither varied nor reversed. In the appeal the whole decree as such was confirmed and the appeal was dismissed. The execution proceedings were already pending and during the pendency of the appeal there was a stay and by virtue of dismissal of the appeal the stay automatically stood vacated. The courts below have ordered the re-delivery on the sole ground that the judgment-debtor was not heard but we are not able to appreciate that the order of delivery should be set aside on that sole ground as, in our view, no purpose would be served by making the decree-holder go through the execution proceedings once again as that would result in unnecessary expenditure and hardship. In any event we have heard the learned counsel for respondent 1 and we are not able to find any valid objection to the execution of the decree which has become final. Learned counsel for respondent 1, the judgment-debtor, however, submitted that on the same date the delivery was ordered and also effected without notice to the judgment-debtor as a result of which the judgment-debtor suffered huge loss as his belongings were removed and appropriated. The stand taken by the decree-holder in this context is that a regular inventory was taken and all the belongings were produced in the court. Having regard to the fact that at the time of delivery the judgment-debtor had not notice, we think this is a fit case where he should get some compensation and this appeal can therefore be allowed subject to certain terms which, in our view, would meet the ends of justice. In the result the appeal is allowed subject to the condition that the appellant pays Rs. 2,000 to respondent 1, the judgment-debtor within four weeks from the date of receipt of this order and files a receipt to this effect in this Court. There will be no order as to costs.

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