

Kazi Akeel Ahmed

Vs

Ibrahim and Another

Civil Appeal No. 7151 of 1996

(Kuldip Singh, Faizanuddin JJ)

17.04.1996

JUDGMENT

FAIZAN UDDIN, J. –

1. Leave granted.

2. This appeal under Article 136 of the Constitution of India has been directed against the order dated 24-11-1992 passed by the High Court of Rajasthan, Jaipur Bench, dismissing the appellant's Civil Revision Petition No. 720 of 1990, arising out of an order dated 24-8-1990 passed by the executing court (Additional Munsif and Judicial Magistrate No. 2). Jaipur City, Jaipur, in Execution Case No. 24 of 1981.

3. The shop in question belonging to the appellant was let out to one Hafiz Abdul Samad. The appellant obtained a decree for possession of the shop in question on 12-7-1971, against Hafiz Abdul Samad, the predecessor-in-interest of Respondent 1 herein. The appellant filed execution of the said decree for possession which was dismissed in default on 4-8-1978. Consequently, the appellant moved another application on 6-5-1981 for execution of the decree with an application for police aid. The executing court by its order dated 15-11-1981 issued warrant of eviction with police help. Respondent 2 Girraj resisted the execution of warrant for possession and made an application before the executing court under Order 21 Rule 97 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as "the Code") claiming himself to be the tenant of the appellant. The executing court directed an enquiry into the said application of Respondent 2. The appellant approached the High Court in revision challenging the said order of the executing court directing an enquiry into the application of objector/Respondent 2. The High Court its order dated 26-2-1985 disposed of the revision with the observation that if the person resisting the execution of decree had any right or interest independent of the judgment-debtor he will have a right to obstruct or resist the execution of decree in accordance with the provisions of Order 21 Rule 97 of the Code and in that even an enquiry would be made.

4. Thereafter Respondent 2 Girraj instituted a civil suit on 16-8-1985, being Civil Suit No. 539 of 1985, for injunction and declaration to the effect that he was occupying the shop in question as a tenant of the appellant and, therefore, he could not be dispossessed from the shop in question in execution of decree against the predecessor-in-interest of Respondent 1. He also made an application for grant of temporary injunction. The civil court found no prima facie case in favour of Respondent 2 and, therefore, rejected his application for temporary injunction. An appeal against the said order was dismissed by the Additional District Judge and the said order was maintained in revision by the High Court.

5. Thereafter, the appellant filed a fresh application for issuance of warrant of possession with police help. The executing court rejected the said application on 24-8-1990. The appellant approached the High Court in revision which was also dismissed by the impugned order dated 24-11-1992, affirming the order of the executing court with regard to the determination of the right of Respondent 2 in the disputed shop against which this appeal has been preferred.

6. A notice was issued by this Court to the respondents. Respondent 1 did not appear though served with notice. Respondent 2 Girraj refused to accept the notice and did not appear on the date of hearing of this appeal.

7. The learned counsel appearing for the appellant submitted that the decree for possession was passed in favour of the appellant as far back as 12-7-1971, but the same could not be executed even to this day due to the resistance and obstruction by Respondent 2 Girraj without any just or a reasonable cause. He submitted that there is absolutely no merit or any substance in the false and fictitious claim of Respondent 2 Girraj that he is a tenant in the shop in his own right independently of Respondent 1 which is evident from the fact that the suit for injunction and declaration filed by him against the appellant was dismissed on 2-11-1995, a certified true copy of which with English translation has been placed on record.

8. We have given serious consideration to the facts of the present case and the submissions made by the learned counsel for the appellant. It is true that when an application under Order 21 Rule 97 of the Code is made, it contemplated an investigation into the claim made in the application, in accordance with the provisions contained in Rule 98 and the rules following thereafter. But in the special facts and circumstances of the present case, we see no reason to hold such an enquiry or investigation as the same would be a futile exercise in view of the fact that civil suit instituted by Respondent 2 Girraj making the same claim as has been made by him in his application under Order 21 Rule 97 has been dismissed by the civil court on 2-11-1995. A perusal of the said judgment goes to show that Respondent 2 Girraj was unable to produce any evidence, oral or documentary, to prove that he was holding the shop in question as a tenant in his own rights. These facts clearly go to show that the claim of Respondent 2 that he is a tenant is wholly fictitious and without any foundation and it was for this reason that the suit had been dismissed with costs to the tune of Rs 2000. Having regard to these facts and circumstances, we find absolutely no merit in the application of Respondent 2 resisting the execution of the decree validly passed by a competent Court of Law.

9. For the reasons stated above, this appeal succeeds and is hereby allowed. The application of Respondent 2 Girraj filed in the executing court under Order 21 Rule 97 resisting the execution of the decree in favour of the appellant is rejected and the orders of the executing court dated 24-8-1990 and the High Court dated 24-11-1992 are set aside. It is directed that the executing court shall deliver possession of the disputed shop to the appellant without any further delay. There will be no order as to costs.