SUPREME COURT OF INDIA

Harpal Singh

Vs.

Ashok Kumar

C.A.No.022967 of 2017

(Dipak Mishra,CJI., A.M.Khanwilkar and Dr.D.Y.Chandrachud.JJ.,)

15.12.2017

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(Civil)No.27279 of 2015

1. Leave granted.

2. A learned Single Judge of the High Court of Delhi, by a judgment dated 19 September 2014 rejected a petition under Article 227 of the Constitution. The petition sought to challenge an order dated 21 August 2010 of the Additional District Judge (North) rejecting the objections of the appellant in the course of the execution of a decree.

3. Sometime in 2002 a suit was instituted by the respondents for a permanent injunction, alleging that the defendants to the suit were threatening to interfere with the possession of their lands situated at Nilothi, Delhi. The suit was dismissed by the Civil Judge on 14 February 2005, holding it to be barred by the provisions of Section 185 (1) of the Delhi Land Reforms Act, 1954. The Trial court held that the plaintiff had failed to place any registered document on record to establish his ownership in respect of the land. Moreover, in the view of the trial Court, it was necessary for the plaintiffs to first seek a declaration from the revenue court as bhoomidars upon which alone an injunction could be sought. Subsequently, on 31 December 2005 the respondents instituted a suit under Section 6 of the Specific Relief Act against the appellant, alleging that the appellant had forcibly taken possession of the land. In response it was the case of the appellant that he was neither in possession of the land nor had he dispossessed the respondents. The suit was decreed by the trial court ex-parte on 30 May 2009, upon which execution was initiated by the respondents as decree-holders. In the course of the execution, the appellant filed objections on the ground that he was not concerned with the suit property and was not in possession and on the ground that the ex-parte decree was obtained by misrepresentation and fraud. The objections were dismissed in default on 16 April 2010 and a warrant of possession was directed to be issued by the ADJ (North)-04, Delhi. The appellant appears to have filed objections to the execution of the

decree on 12 July 2010 on the ground that Section 185 of the Delhi Land Reforms Act bars a civil suit for the recovery of possession. The objections were dismissed by the executing Court on 21 August 2010 with the following observations:

> "The Delhi Land Reforms Act is applicable with regard to the agricultural land only but the land in question is not agriculture land which has been vehemently argued by the counsel for the DH and in support of her contention placed on record the copies of the electricity bills pertaining to the same khasra number which is subject matter of the instant execution proceedings. Even otherwise, it is a matter of common knowledge that most of the rural land in Delhi has become urbanized and private colonies, may be unauthorized, have mushroomed on such agricultural land. This fact has since been substantiated with the help of electricity bills which takes out the sting from the contentions raised by the counsel for the objector and in the process strengthens the case of the DH, the arguments is thus, brushed aside that the court lack of inherent jurisdiction on account of the fact that land in question is governed by the Delhi Land Reforms Act being agriculture land."

The order of the executing court was challenged by the appellant under Article 227 of the Constitution. The High Court dismissed the petition by its judgment dated 19 September 2014. The High Court rejected the submission that the decree obtained under Section 6 of the Specific Relief Act was a nullity on the ground that the suit was barred by Section 185 of the Delhi Land Reforms Act, 1954.

4. On behalf of the appellant it has been submitted that since an earlier suit seeking a permanent injunction was dismissed by a competent civil court in view of the provisions of Section 185(1) of the Delhi Land Reforms Act 1954, and since the land is 'agricultural' in nature, the civil court did not have jurisdiction in the matter. The decree was a nullity and this defence, it was submitted, could be raised in execution.

5. The High Court has relied upon the earlier decisions of the court following *Ram Lubbaya Kapoor v J R Chawla and others*[1], in which it has been held that to be 'land' for the purpose of the Delhi Land Reforms Act,1954, the land must be held or occupied for purposes connected with agriculture, horticulture or animal husbandry and if it is not used for such purposes, it ceases to be land for the purposes of the Act. The same view has been taken by the Delhi High Court in *Narain Singh and Anr v Financial Commissioner*[2], *Neelima Gupta and Ors v Yogesh Saroha and Ors*[3] , *and Anand J Datwani v Ms Geeti Bhagat Datwani and Ors*[4].

6. Section 3(13) of the Delhi Land Reforms Act defines the expression 'land' as follows:

> "(13) "land" except in sections 23 and 24, means land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes - (a) Buildings appurtenant thereto,
> (b) Village abadis,

(c) Grovelands,

(d) Lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation, But does not include- land occupied by building in belts or areas adjacent to Delhi town, which the Chief Commissioner may be a notification in the Official Gazette declare as an acquisition thereto;"

The position of law which has been consistently followed is that where the land has not been used for any purpose contemplated under the Land Reforms Act and has been built upon, it would cease to be agricultural land. Once agricultural land loses its basic character and has been converted into authorized/unauthorized colonies by dividing it into plots, disputes of plot holders cannot be decided by the revenue authorities and would have to be resolved by the civil court. The bar under Section 185 would not be *attracted*[5]. This position of law has not been controverted in the present proceedings.

7.The validity of a decree can be challenged before an executing court only on the ground of an inherent lack of jurisdiction which renders the decree a nullity. In *Hira Lal Patni v Sri Kali Nath*[6], this Court held thus:

> "...The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it..."

In *Sunder Dass v Ram Prakash*[7], this court held that:

> "Now, the law is well settled that an executing court cannot go behind the decree nor can it question its legality or correctness. But there is one exception to this general rule and that is that where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the court to try the case and a decree which is a nullity is void and can be declared to be void by any court in which it is presented. Its nullity can be set up whenever and wherever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. The executing court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree. By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. Vide Kiran Singh v. Chaman Paswan [AIR 1954 SC 340 : (1955) 1

SCR 117] and Seth Hiralal Patni v. Sri Kali Nath [AIR 1962 SC 199 : (1962) 2 SCR 747]. It is, therefore, obvious that in the present case, it was competent to the executing court to examine whether the decree for eviction was a nullity on the ground that the civil court had no inherent jurisdiction to entertain the suit in which the decree for eviction was passed. If the decree for eviction was a nullity, the executing court could declare it to be such and decline to execute it against the respondent."

[See also *Gaon Sabha v Nathi*[8]]

8. In the present case, the finding of fact which was arrived at by the executing Court in the course of its decision on the objection to execution is that the land had ceased to be agricultural land and was not being used for purposes contemplated under the Delhi Land Reforms Act 1954. The High Court while affirming the view of the executing court made the following observations:

> ".But in the present case, the Decree Holder had shown electricity bills pertaining to the same Khasra number and the Court also considered that most rural lands in Delhi have become urbanized and private unauthorized colonies have mushroomed on agricultural lands. Therefore, in fact, the said land had lost its character of agricultural land. Besides, the suit was filed under Section 6 of the Specific Relief Act for declaration and possession along with injunction and other consequential reliefs. The executing Court found that the objector had not shown as to how the said suit was not maintainable. It relied upon the dicta of the Supreme Court in Hira Lal Patni v. Sri Kali Nath, AIR 1962 SC 199 which held that "the validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking inherent jurisdiction in the sense that it could not have seisin of the case because the subject matter was wholly foreign to its jurisdiction or that the defendant was dead at the time the suit had been instituted or decree passed, or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject matter of the suit or over the parties to it. But in the instant case there was no such inherent lack of jurisdiction."

9. The above findings have not been squarely challenged in these proceedings. The suit which was decreed on 30 May 2009 was a suit under Section 6 of the Specific Relief Act which in any event, did not require a determination of the question of title. The earlier suit was a suit for injunction. The finding of fact which has been arrived at is to the effect that the land in question had ceased to be agricultural in nature on the date of the institution of the suit. Hence, it cannot be held that the decree of the trial court was a nullity. The land was not governed, as a result, by the Delhi Land Reforms Act, 1954 since it was not agricultural and the bar under Section 185 was not attracted. There was no inherent lack of jurisdiction and the objection to the execution of the decree was without foundation.

10. For the above reasons, we find no merit in the civil appeal, which is accordingly dismissed. There shall be no order as to costs.

[1]*(1986) RLR 0432*

[2]*(2008) 105 DRJ 122*

[3]*156 (2009) DLT 129*

[4] *(2013 (137) DRJ 0146*

[5] *Section 185 provides thus:*

"185. Cognizance of suits, etc., under this Act- (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule I shall, notwithstanding anything contained in the Code of Civil Proced8re, 1908 (5 of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof.

(2) Except as hereinafter provided no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the Schedule 3 aforesaid.

(3) An appeal shall lie from the final order passed by a court mentioned in column 3 to the court or authority mentioned in column 8 thereof.

(4) A second appeal shall lie from the final order passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 9 of the Schedule aforesaid.

[6]*(1962) 2 SCR 0747*

[7]*(1977) 2 SCC 0662*

[8]*(2004) 12 SCC 0555*