

RAJASTHAN HIGH COURT

S.C. Khanna

Vs.

Rajendra Singh

Civil Revn. Petn. No. 1072 of 2001

(Mrs. Gyan Sudha Misra, J.)

08.10.2001.

JUDGEMENT

Mrs. Gyan Sudha Misra, J.

1. The question that falls for consideration in this revision petition is whether objections to the execution of a decree under Section 47 of the Civil Procedure Code read with Order 21 Rule 99 at the instance of a third party, who was not a party to the suit, is sustainable without discharging the burden of proving his title and possession on the suit property specially while resisting a decree of eviction.

2. The aforesaid question arises under the following facts and circumstances :-

A decree of eviction was passed in favour of the respondent Nos. 1 to 3 as against respondent No. 4 Ramesh Chander Malhotra which was put to execution. The petitioner filed an objection under Order 21, Rule 99 of the Civil Procedure Code stating therein that the decree was collusive between the decree- holder respondent Nos. 1, 2, 3 and respondent No. 4 Ramesh Chandra Malhotra as it was the objector/petitioner, who infact is the tenant of the suit premises and he was inducted as a tenant in the suit premises by one Shri Man Singh Chudawat.

3-4. The Courts below rejected the objection of the petitioner recording reasons that although he claims to be a tenant of Man Singh Chudawat, the sale deed which was executed by Man Singh Chudawat in favour of the decree-holder respondent Nos. 1, 2 and 3 itself indicates that the tenant was respondent No. 4 Ramesh Chander Malhotra against whom decree of eviction has been passed and it was further held that the

objector/petitioner was a sub-tenant in the suit premises. Thus, the objections filed by the petitioner were dismissed by the Court below against which this revision petition has been filed.

5. The counsel for the petitioner has submitted with a lot of conviction that the decree being collusive between the decree-holder and the judgment debtor, who are respondents-herein, the same was not binding on him as he was the real tenant in the suit premises, who was not a party to the suit. The argument advanced is totally devoid of substance, as it is missed that once the landlord of the petitioner Man Singh Chudawat died in the year 1981 and a sale deed of the suit premises even prior to this was executed in favour of respondent Nos. 1, 2 and 3, he was under an obligation to prove it before the Executing Court how he continued to be a tenant in the suit premises in absence of any rent-receipt in his favour issued either by the successors of the landlord Man Singh Chudawat or by the subsequent purchaser of the suit premises since Section 19-A of the Rajasthan Premises (Control of Rent and Eviction), Act, 1950 clearly envisages the modes of payment of rent to the landlord which was not adopted by the petitioner at all since no rent receipts after 1981 have been produced by the petitioner nor it is his case that he at all deposited the rent to any one who refused to accept it. Thus the petitioner in this case although claims to be a *bona fide* tenant in the suit premises and therefore filed objections against execution of the decree of eviction, he has neither deposited rent to the previous landlord nor to the subsequent purchaser of that premises or in Court. Thus, there is no iota of evidence that he is a *bona fide* tenant of the suit premises so as to justify his objections to the execution for final decree. The rent receipt which he claims had been issued in his favour by deceased-landlord Man Singh Chudawat is prior to the year 1981 after which the respondent Nos. 1, 2 and 3 became the landlord of the suit premises by virtue of the sale deed executed in his favour by the deceased-landlord Shri Man Singh Chudawat. In that situation, if the petitioner has been held to be a sub-tenant of the subsequent purchaser who is respondent No. 4 herein and thus has been denied the right to file the objection to the execution of the decree, it is difficult to interfere with such order. The objector/petitioner thus cannot be said to be having any right to raise objections against execution of the decree in absence of any proof how he claims to be in occupation of the suit premises and in what manner he can be said to be a tenant to the suit premises through the landlord, who is no longer alive or his successor claim title to the suit premises.

6. It cannot be denied that anyone who files objections to the execution of decree passed by a Court of competent jurisdiction on the ground of collusion, has to discharge the burden of proving his title and possession on the suit property and in case pleads that he is in occupation as a *bona fide* tenant, he will have to prove the relationship of landlord and tenant between him and any one through whom he claims the property. If this were not the position, it will be an end-less road for any decree-holder to get the decree executed. The petitioner, therefore, in my view was under a legal obligation to prove his case in what manner he continued to be a tenant in the suit premises even after 1981 when his landlord was dead, who had executed a sale deed in favour of respondent No. 4 and how he came in possession of the suit house specially when the decree-holder came up with a case that the petitioner was merely a sub-tenant of the decree-holder against whom decree has been passed holding that it is not a collusive decree.

7. Under the circumstances, this revision petition is dismissed.

Revision Petition dismissed.