

Assistant Custodian-General Of ... vs Lila Devi And Anr. on 25 July, 1980

Equivalent citations: AIR1980SC2080, (1980)4SCC224, 1980(12)UJ744(SC), AIR 1980 SUPREME COURT 2080, 1980 UJ(SC) 744

Bench: O. Chinnappa Reddy, R.S. Pathak

JUDGMENT

S. Murtaza Fathak, J.

1. This appeal by certificate granted by the High Court of Allahabad under Sub-clauses (a)(b) and (c) of Clause (1) of Article 133 of the Constitution is directed against the judgment and order of the High Court all owing a special appeal arising out of a writ petition filed by the respondent.

2. A suit was brought in 1935 by one Nawab Ali Raza Khan against; Nawab Nawazish Ali Khan for recovery of property After a chequered career the suit was disposed of in appeal by the Judicial Committee of the Privy Council by a decree granting a declaration in favour of the plaintiff, A claim for mesne profits was left to the trial Court for adjudication. On 27th September, 1955 the trial Court passed a decree against Nawab Nawazish Ali Khan in the following terms:

It is hereby decreed that the defendant to pay to the plaintiff the sum of Rs. 11,53,600/ with interest thereon at 3% per annum to the date of realization on account of mesne profits which have accrued since the institution of the suit subject to payment of Court fee on the entire amount after deducting the Court fee already paid.

3. It appears that during the pendency of the aforesaid proceedings the plaintiff, Nawab Ali Raza Khan, had applied for attachment. One of the properties against which attachment was levied was a plot of land on which stood a cinema building "Prakash Talkies". An objection was filed by the defendant's wife, Asmat Jahan Begum, that the property belonged to her. The objection was allowed. But on a suit under Order 21 Rule 63 C.P.C. Brought thereafter by the decree holder the property was held to belong to Nawab Nawazish Ali Khan It seems that the decree holder migrated to Pakistan, and his estate was taken over by the Custodian of Evacuee Property. He proceeded to recover the amount decreed as mesne profits under Section 48 of the Administration of Evacuee Property Act. As the respondent, Smt. Lila Devi, was in possession and claimed that the land on which "Prakash Talkies" stood belonged to her, he levied the recovery proceeding against her. Her objection that the property belonged to her and could not be said to be part of the evacuee estate was overruled by the Assistant Custodian of Evacuee Property. An appeal was subsequently dismissed by the Assistant Custodian General. Then she filed a writ petition in the High Court of Allahabad. The

writ petition was dismissed by a learned Single Judge. A special appeal filed by her against the judgment and order of the learned Single Judge has been allowed by a Division Bench. Hence this appeal.

4. The contention of learned Counsel for the appellants is that by virtue of Section 48 of the Administration of Evacuee Property Act the appellant is entitled to recover the amount of mesne profits decreed in the original suit notwithstanding that the Court fee has not yet been paid pursuant to the decree. It is printed cut that an order made by the trial Court in execution proceedings that the decree was not executable unless the deficiency in Court fee was made good restrains execution proceedings only and does not bar recovery by some other mode, such as recovery under Section 48 of the Administration of Evacuee property Act. In our opinion, reference to Section 46 can be of assistance to the appellant. The decree for payment of mesne profits cannot be said to have come into operation. It is a conditional decree. The sum decreed as mesne profits is payable to the decree holder only if the full amount of Court fee is paid by him. The decree itself embodies that stipulation. The obligation on the part of the judgment debtor to pay the mesne profits accrues only on the satisfaction of that condition. Admittedly, the deficiency in Court fee has not been removed. Plainly, therefore, the appellant is not entitled to payment of the mesne profits under the decree.

5. Mr. S.N. Kacker, learned Counsel for the respondent, points out that there are a number of other grounds which have been taken by the learned Single Judge in dismissing the writ petition and he seeks to show as that those grounds are unsustainable. In the view taken by us on the short point that arises in this case, we consider it necessary to go into those points.

6. Accordingly, the appeal is dismissed with costs.