Satyawati vs Rajinder Singh And Anr on 29 April, 2013

Equivalent citations: 2013 AIR SCW 3952, (2013) 127 ALLINDCAS 193 (SC), 2013 (5) ABR 395, 2013 (3) AIR KANT HCR 406, (2013) 2 ORISSA LR 585, (2013) 120 REVDEC 448, AIR 2013 SC (CIV) 1954, (2014) 1 RECCIVR 324, (2013) 7 SCALE 371, (2013) 3 JCR 260 (SC), (2013) 99 ALL LR 504, (2013) 4 ALL WC 3969, (2014) 1 MPLJ 291, 2013 (9) SCC 491, (2014) 1 ICC 610, (2013) 2 CLR 238 (SC), (2014) 2 CIVLJ 638, (2013) 5 MAD LW 697, (2014) 1 MAH LJ 624, (2014) 4 CAL HN 261, (2013) 116 CUT LT 1106, 2013 (3) KCCR SN 239 (SC), 2013 (4) KCCR SN 392 (SC)

Bench: G.S. Singhvi, Anil R. Dave, Ranjana Prakash Desai

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4176 OF 2013
(Arising out of SLP© No.29703 of 2011)

Satyawati …APPELLANT

VERSUS

Rajinder Singh and Anr. ....RESPONDENTS

O R D E R

AS PER ANIL R. DAVE, J.

1. Leave granted.

2. In relation to the difficulties faced by a decree holder in execution of the decree, in 1872, the Privy Council had observed that ".....the difficulties of a litigant in India begin when he has obtained a Decree.....".

3. Even today, in 2013, the position has not been improved and still the decree holder faces the same problem which was being faced in the past. We are concerned with the case of the appellant-plaintiff

who had succeeded in Civil Appeal No. 89 of 1993 in the Court of District Judge, Faridabad on 19th January, 1996. Decree was drawn in pursuance of the aforestated judgment but till today, the appellant- plaintiff is not in a position to get fruits of his success.

4. It is not in dispute that the judgment delivered in Civil Appeal No. 89 of 1993 in favour of the appellant has become final as it was not challenged before the High Court. In pursuance of the decree drawn, the appellant made several efforts to get the decree executed. His last effort, with which we are concerned, had been initiated in 1996, when he had approached the court of Additional Senior Division, Palwal with an Execution Petition for execution of the decree.

5. As the decree had already been made in favour of the appellant, we need not go into the facts of the case, however it will be worth noting that by virtue of the decree, the appellant-plaintiff is entitled to possession of land admeasuring 80 sq. yard forming part of land of Khasra No.95/24/2 situated within municipal limits of Palwal town, District Faridabad. When the Execution Petition was filed, the Executing Court rejected the Execution Petition by observing that the decree was not executable because of certain contradictory reports. It is pertinent to note that the judgment in favour of the appellant- plaintiff was delivered by considering a report dated 17th September, 1989 and a sketch of land in question, which were made by the local commissioner and both are forming part of the record. It appears that some other reports were considered by the Executing Court and after considering all the reports, the Executing Court, by its order dated 16th March, 2009 came to the conclusion that the decree was not executable.

6. Being aggrieved by the aforestated order dated 16th March, 2009, the appellant approached the High Court by filing Civil Revision No. 2047 of 2010. The said Revision application was rejected by an order dated 25th May, 2011 and therefore, the appellant-plaintiff has approached this court by way of this Appeal.

7. While confirming the order of the Executing Court dated 16th March, 2009, the High Court took into consideration the subsequent demarcation report dated 26th July, 2010 and after discussing both the reports came to the conclusion which had been arrived at by the Executing Court.

8. We have heard the learned counsel appearing for the appellant- plaintiff as well as for the respondents.

9. Looking to the facts of the case, in our opinion, the High Court was not right while confirming the order passed by the Executing Court for the reason that the Executing Court had taken into account certain other reports for the purpose of rejecting the execution proceedings and for coming to the conclusion that the decree was not executable.

10. Looking to the facts of the case and upon hearing the learned counsel, we are of the view that the order passed by the Executing Court dated 16th March, 2009, which has been confirmed by the High Court is not correct for the reason that the Executing Court ought not to have considered other factors and facts which were not forming part of the judgment and the decree passed in favour of the appellant- plaintiff. Once the decree was made in favour of the appellant- plaintiff, in pursuance of

the judgment dated 19th January, 1996 delivered by the District Judge Faridabad, in our opinion, the Executing Court should not have looked into other reports which had been submitted to it afterwards.

11. Upon perusal of the reports, we find that the local commissioner's report clearly describes the land which admeasures 80 sq. yard and which is forming part of Khasra No. 95/24/2 and the report given by the local commissioner also gives details of the land in question by way of a sketch. In our opinion, the Executing Court ought to have looked at the sketch which was prepared by the local commissioner and which was accepted as a correct sketch by the Appellate Court while delivering the judgment dated 19th January, 1996, which has become final.

12. In our opinion, the view expressed by the Executing Court and confirmed by the High Court is not correct and therefore, we allow this appeal and quash and set aside the impugned order of the High Court passed in C.R. No. 2047 of 2010 dated 25th May, 2011, confirming the order passed by the Executing Court dated 16th March, 2009. We direct the Executing Court to do the needful for execution of the decree by taking into account the local commissioner's report and sketch prepared by him dated 17th September, 1989.

13. It is really agonizing to learn that the appellant- decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant- plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of The General Manager of the Raj Durbhnga under the Court of Wards vs. Maharajah Coomar Ramaput Sing had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while quoting the aforestated judgment of the Privy Council in the case of Kuer Jang Bahadur vs. Bank of Upper India Ltd., Lucknow [AIR 1925 Oudh 448], the Court was constrained to observe that "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights."

14. In spite of the aforestated observation made in 1925, this Court was again constrained to observe in Babu Lal vs. M/s. Hazari Lal Kishori Lal & Ors. [(1982) 1 SCC 525] in para 29 that "Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections……"

15. This Court, again in the case of Marshall Sons & Co. (I) Ltd. vs. Sahi Oretrans (P) Ltd. & Anr. [(1999) 2 SCC 325] was constrained to observe in para 4 of the said judgment that "…..it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of

procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes long time....."

16. Once again in the case of Shub Karan Bubna alias Shub Karan Prasad Bubna vs. Sita Saran Bubna and Ors. [(2009) 9 SCC 689] at para 27 this Court observed as under :

> "In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant."

17. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

18. We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice.

19. The appeal is allowed with no order as to costs.

....J (G.S. SINGHVI ....J (ANIL R. DAVE) ....J (RANJANA PRAKASH DESAI) New Delhi 29th April. 2013
