

Bhanwari Lal vs Satyanarain And Another on 4 October, 1994

Equivalent citations: 1995 AIR 358, 1995 SCC (1) 6, AIR 1995 SUPREME COURT 358, 1995 (1) SCC 257, AIR 1994 SUPREME COURT 356, 1994 AIR SCW 4549, 1994 AIR SCW 4547, (1995) 1 SCJ 237, 1994 (2) REVLR 360, (1996) 55 ECC 40, 1995 (109) PUN LR 323, 1994 SCFBRC 407, (1994) 6 JT 629 (SC), 1994 (6) JT 626, 1995 (1) BLJR 57, 1995 (2) BOM CJ 285, 1995 (1) RAJLW 11

Author: K. Ramaswamy

Bench: K. Ramaswamy, S.C. Agrawal, N Venkatachala

PETITIONER:

BHANWARI LAL

Vs.

RESPONDENT:

SATYANARAIN AND ANOTHER

DATE OF JUDGMENT 04/10/1994

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

AGRAWAL, S.C. (J)

VENKATACHALA N. (J)

CITATION:

1995 AIR 358

1995 SCC (1) 6

JT 1994 (6) 626

1994 SCALE (4) 597

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1.The appellant had obtained a decree in Second Appeal No. 175/71 from the High Court of Rajasthan on 21-3-1979 of ejectment of Ram Kishan, mesne profits till date of possession and also

arrears of rent. That decree had become final. Thereafter, the appellant filed an execution application under Order 21, Rule 35(3) of the Code of Civil Procedure, for short the CPC, on 24-5-1979. Thereafter, when one Satyanarain, the first respondent in this appeal had obstructed delivery of the possession, on the next day, namely, 25-5-1979, he made an application under Order 21, Rule 35(3) for police assistance to remove the obstruction caused by Satyanarain. The Court directed the appellant to make an application under Order 21, Rule 97 pursuant to which the appellant made second application on 18-7-1979 under Order 21, Rule 97 CPC for removal of obstruction caused by Satyanarain. The District Munsif, Executing Court, on 12-1-1981, dismissed that application as being barred by limitation under Article 129 of the Schedule to the Indian Limitation Act, 1963. On the even day, he filed a third application under Order 21, Rule 97 CPC which was dismissed on 20-2-1982 as being barred by res judicata. On an appeal filed by the appellant, the Civil Judge, Bikaner, by his order dated 19-5-1983, directed removal of the obstruction holding that the third application was not precluded to be filed by the appellant. The High Court in Civil Revision No. 352 of 1983 filed by Satyanarain in the impugned order dated 3-2-1987 set aside the order of the appellate court and confirmed that of the executing court. On further review, the High Court confirmed its earlier order. Thus, this appeal by special leave against both the orders.

2. The crux of the question is whether the application filed on 25-5-1979 by the appellant, though purported to be under Order 21, Rule 35(3) against Satyanarain, is convertible to one under Order 21, Rule 97. Order 21, Rule 35(3) provides that:

"35. (3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession."

3. A reading of Order 21, Rule 35(3) postulates that the person in possession of the immovable property to be delivered under the decree must be per force bound by the decree. Admittedly, Satyanarain was not a judgment-debtor and that therefore, he is not bound by the decree unless he claims right, title or interest through the judgment-debtor, Ram Kishan. The person resisting delivery of possession must be bound by the decree for possession. In other words the resistor must claim derivative title from the judgment-debtor. The court gets power under Order 21, Rule 97 to remove such obstruction or resistance and direct its officer to put the decree-holder in possession of the immovable property after conducting enquiry under Rule 97.

4. Order 21, Rule 97 provides thus:

"97. Resistance or obstruction to possession of immovable property.- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court

complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained."

5. The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21, Rules 98 to 102. A reading of order 21, Rule 97 CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

6. When the appellant had made the application on 25-5- 1979 against Satyanarain, in law it must be only the application made under Order 21, Rule 97(1) of CPC. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost.

7. In the above view we have taken, the High Court has committed grievous error of jurisdiction and also patent illegality in treating the application filed by the appellant as barred by limitation and the third one on res judicata. Once the application, dated 25-5-1979 was made, the Court should have treated it to be one filed under Order 21, Rule 97(1) CPC. The question of res judicata for filing the second and third applications does not arise. Under these circumstances the appellate court, though for different reasons was justified in directing an enquiry to be conducted for removal of the obstruction or resistance caused by Satyanarain under Order 21 Rules 35(3) and 97(2) and Order 21, Rules 101 and 102 of CPC.

8. The appeal is accordingly allowed. The order of the High Court and that of the executing court are set aside. The executing court is directed to conduct an enquiry for removal of the obstruction for delivery of possession of the property covered by the decree and pass appropriate orders according to law. The application filed by Lakshminarain is rejected. If he has got any other right independent of the rights in the proceedings under execution, it may be open to him to agitate the same according to law. No costs.