2024 INSC 773

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 8315 – 8316 OF 2014

RENJITH K.G. & OTHERS ...APPELLANT(S)

VERSUS

SHEEBA ...RESPONDENT(S)

J U D G M E N T

R.MAHADEVAN, J.

Heard Mr. Sanand Ramakrishnan, learned counsel for the appellants and Mrs.Nishe Rajen Shonker, learned counsel for the Respondent.

2. These Civil Appeals are preferred against the judgment and order dated 11.11.2011 passed by the High Court of Kerala at Ernakulam[1] in E.F.A Nos.6 and 7 of 1998, whereby, the High Court allowed the said appeals and remanded the matter to the trial Court for fresh consideration.

3. Succinctly stated facts are that the appellants are the legal representatives of the original plaintiff / decree holder viz., Padmakshy (deceased), who had filed a suit in O.S.No.38 of 1956 before the Sub Court, Parur, for partition and separate possession of her share in the plaint schedule 13 items of immovable properties.

[1] Hereinafter shortly referred to as “the High Court”

The Sub Court, Parur, passed a preliminary decree on 23.10.1958. Subsequently, the said suit was transferred to the file of the Additional District Court, Parur and re-numbered as O.S.No.82 of 1960, in which, a final decree was passed on 09.03.1970.

4. The dispute revolved around is *qua* item no.4 of the plaint schedule property measuring an extent of 1 acre 57 cents in Sy.No.120/10 situated at Muppathepadam Kara, Kodungallur Village, Paravur Taluk, Kerala, which originally belonged to one Ayyapan, who had eight children. In the year 1085 M.E.[2] the said Ayyappan executed a mortgage in favour of one Kunjan and created a further mortgage in favour of the same mortgagee in the year 1093 M.E.[3] On the death of Ayyappan, his six children assigned their 6/8 shares in favour of one Raghuthaman, by gift deed No. 2147 dated 17.07.1963 and the remaining 2/8 shares were obtained by the Defendant No.1, by name, Padmanabhan, as per the deed No.1491 of 1119 M.E.[4] On the death of the mortgagee Kunjan, his rights devolved on the Defendant No.1 and the original plaintiff Padmakshy (who was a minor at that time). The Defendant No.1, without the concurrence of Padmakshy, executed a mortgage for Rs.1,000/- in favour of one Nanu, in the year 1123 M.E.[5] and the said Nanu, in turn, assigned his right to the Defendant

[2] Malayalam Era or the Malayalam Calendar. To get the corresponding year on the Gregorian Calendar, add 826 which makes it 1911.

[3] Gregorian Calendar year 1919

[4] Gregorian Calendar year 1945

[5] Gregorian Calendar year 1949

No.10, by name, Veeran, as per deed No.101 of 1951. As per document No.3669 of 1964, the Defendant No.10 assigned his right to the said Raghuthaman.

5. In the final decree proceedings, *qua* item no.4, based on the Advocate Commissioner's report, the plaintiff was allotted one half portion of the property in Sy.No.120/10 i.e., red shaded portion in Ex.C2 plan; and the Defendant No.10 was directed to pay a sum of Rs.461.67 towards equalisation and also mesne profit at the rate of Rs.64.80 per year to the plaintiff. The final decree was engrossed on the requisite stamp paper on 19.11.1990. To execute the same, the plaintiff preferred an Execution Petition bearing No.4 of 1991, in which, notice was ordered to the defendants / judgment debtors, but, they did not turn up. Ultimately, the Executing Court ordered delivery of possession and accordingly, a portion of item no.4 plaint schedule property, as shown in Ex.C2 plan, was delivered to the plaintiff on 22.11.1994.

6. Thereafter, the aforesaid Raghuthaman preferred E.A.No.1 of 1995 in E.P. No.4 of 1991under Order XXI Rule 99 of the Civil Procedure Code[6] for re-delivery of the property mentioned in Ex.C2 plan, claiming independent right, title and interest in the same. Along with this application, he also filed E.A.No.2 of 1995 seeking an order of injunction restraining the plaintiff from committing waste till the disposal of EA No.1 of 1995; and E.A.No.3 of 1995 for recovery of damages to the tune of Rs.25,000/- from the plaintiff for having committed waste

[6] For short, "CPC"

in the property. All the three applications were jointly heard and were dismissed, by a common order dated 12.08.1997.

7. Aggrieved by the aforesaid order passed in E.A. Nos.1 and 3 of 1995, the said Raghuthaman filed Execution First Appeals viz., EFA Nos.6 of 1998 and 7 of 1998, which came to be dismissed by the High Court, by judgment dated 30.05.2007. Seeking to review the said judgment, the respondents herein, who are the legal representatives of the said Raghuthaman, filed R.P.Nos.1107 and 934 of 2007, which came to be allowed, by order dated 22.03.2010. Pursuant to the same, E.F.A Nos.6 and 7 of 1998 were re-heard and were eventually, allowed by the High Court, by the judgment dated 11.11.2011 which is impugned herein.

8. The first and foremost contention of the learned counsel appearing for the appellants is that the predecessor of the respondents (Raghuthaman) did not establish his independent right, title or interest in the property in question and he was only a *pendente lite* transferee and therefore, he cannot resist the execution of a decree filed by the original plaintiff / decree holder. Additionally, the learned counsel submitted that the decision in *Chiranji Lal (D) by LRs. v. Hari Das (D) by LRs.*[7] relied on by the High Court is not applicable to the facts of the present case.

9. The learned counsel appearing for the contesting respondent, on the other hand, submitted that the final decree was passed on 09.03.1970; it was engrossed

[7](2005) 10 SCC 746

on the stamp paper on 19.11.1990; the execution petition seeking delivery of possession of the property under the decree was preferred only on 13.03.1991, which was clearly barred by limitation as per Article 136 of the Limitation Act. That apart, the predecessor of the respondents under Order XXI Rule 99 CPC is entitled to raise the question of limitation for the execution of the decree, which has become time-barred. Accordingly, the High Court set aside the order dated 12.08.1997 passed in EA Nos.1 and 3 of 1995 and remanded the matter to the trial Court for fresh consideration, by the judgment impugned herein, which does not call for any interference at the hands of this Court.

10. We have considered the rival submissions made by the learned counsel on either side and perused the records carefully and meticulously.

11. The facts narrated above are not disputed. Concededly, in the suit filed by the original plaintiff, preliminary decree was passed on 23.10.1958; final decree was passed on 09.03.1970 and it was engrossed on stamp paper on 19.11.1990; and the Execution Petition seeking delivery of possession of the suit properties, came to be filed only on 13.03.1991. It is also to be noted that in the final decree, there was no order directing the parties to furnish stamp papers for the purpose of engrossing the decree.

12. Seemingly, the predecessor of the respondents claimed right, title and interest *qua* 78.5 cents forming part of item no.4 of the plaint schedule property, by virtue of the assignment deed dated 01.12.1964 bearing No.3669 executed by

the Defendant No.10. Pursuant to the order of the Executing Court, he was dispossessed from the subject property, in which, he was occupying and the possession was handed over to the plaintiff / decree holder. After repeated challenge, the applications preferred by the predecessor of the respondents seeking re-delivery of possession and damages, contending *inter alia* that the Execution Petition was barred by limitation, came to be allowed and the matter was remanded to the trial Court for fresh consideration, by the judgment impugned herein.

13. It was the specific plea of the appellants that the predecessor of the respondents being a *pendente lite* transferee, is not entitled to file an application under Order XXI Rule 99 CPC and raise the question of limitation of the Execution Petition, so as to deprive the right of the appellants to enjoy the fruits of the decree.

14. On a reading of Order XXI Rule 99 CPC, it is lucid that where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property, or where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession. It also means that a third party to the decree has a right to approach the Court even after dispossession of the immovable property, which he was occupying. In the case on hand, the predecessor of the respondents was not a party to the suit and he was dispossessed

from the property, in execution of the decree passed in the suit and therefore, he who is purported to be a stranger to the decree, can very well adjudicate his claim of independent right, title and interest in the decretal property as per Order XXI Rule 99 CPC.

15. In so far as the claim of appellants that the predecessor of the respondents, namely Mr.Raghuthaman, being *pendent lite* transferee and hence would have no locus to file the application seeking re-delivery, we have already held that "any person" not a party to the suit or in other words a stranger to the suit can seek re-delivery, after he has been dispossessed. The term "Stranger" would cover within its ambit, a *pendent lite* transferee, who has not been impleaded. That apart, the facts in the present case disclose that the property stood transferred to the predecessor of the respondents before the Final Decree was passed in 1970. The fact that Mr.Raghuthaman had successfully resisted the claim of the 9th Defendant for delivery of possession, in the presence of the predecessor of the appellant is not disputed. While so, it was incumbent on the appellants to have impleaded the predecessor of the respondents by filing an application under Order 21 Rule 97 of CPC, when they resisted the delivery. The *pendent lite* purchaser has every right to defend his right, title, interest and possession. This Court recently while adjudicating the right of a *pendent lite* transferee held as under:

> ***Yogesh Goyanka v. Govind*, (2024) 7 SCC 524 : 2024 SCC OnLine SC 1692**
>
> ***"16.*** *The fulcrum of the dispute herein concerns the impleadment of a transferee pendente lite who undisputedly had notice of the pending*

litigation. At the outset, it appears pertinent to reiterate the settled position that the doctrine of lis pendens as provided under Section 52 of the Act does not render all transfers pendente lite to be void ab initio, it merely renders rights arising from such transfers as subservient to the rights of the parties to the pending litigation and subject to any direction that the Court may pass thereunder.

***"17.** Therefore, the mere fact that RSD was executed during the pendency of the underlying suit does not automatically render it null and void. On this ground alone, we find the impugned order to be wholly erroneous as it employs Section 52 of the Act to nullify RSD and on that basis, concludes that the impleadment application is untenable. Contrary to this approach of the High Court, the law on impleadment of subsequent transferees, as established by this Court has evolved in a manner that liberally enables subsequent transferees to protect their interests in recognition of the possibility that the transferor pendente lite may not defend the title or may collude with the plaintiff therein (see the decision of this Court in Amit Kumar Shaw v. Farida Khatoon [Amit Kumar Shaw v. Farida Khatoon, (2005) 11 SCC 403] & A. Nawab John v. V.N. Subramaniyam[A. Nawab John v. V.N. Subramaniyam, (2012) 7 SCC 738 : (2012) 4 SCC (Civ) 324])."*

16. The difference between the rights of a decree holder qua a third party to the suit and the right of a third party after being dispossessed has been laid down by this Court in ***Sriram Housing Finance & Investment (India) Ltd. v. Omesh Mishra Memorial Charitable Trust*, (2022) 15 SCC 176 : 2022 SCC OnLine SC 794, wherein it was held as follows:**

***"24.** On conjoint reading of the aforesaid provisions, it can be observed that under Rule 97, it is only the "decree-holder" who is entitled to make an application in case where he is offered resistance or obstruction by "any person". In the present case, as admitted by the appellant itself, it is a bona fide purchaser of the property and not the "decree-holder". As available from the material placed on record, it is the respondent Trust along with legal heirs of late N.D. Mishra who are the decree-holders and not the appellant. Therefore, it is obvious that the appellant cannot take shelter of Rule 97 as stated above to raise objections against execution of decree passed in favour of the respondent. Further, Rule 99 pertains to making a complaint to the Court against "dispossession" of the*

immovable property by the person in "possession" of the property by the holder of a decree or purchaser thereof.

***"25.** It is factually not in dispute that the appellant purchased the said property from Mr Yogesh Mishra vide sale deed dated 12-4-2004 and has been in vacant and physical possession of the property since then. Had it been the case that the appellant was dispossessed by the respondent Trust in execution of decree dated 2-9-2003, the appellant would have been well within the ambit of Rule 99 to make an application seeking appropriate relief to be put back in possession. On the contrary, the appellant in the instant case was never dispossessed from the property in question and till date, as contended and unrefuted, the possession of same rests with the appellant. Considering the aforesaid, the appellant cannot be said to be entitled to make an application under Rule 99 raising objections in execution proceedings since he has never been dispossessed as required under Rule 99.*

***26.** Now, as stated above, applications under Rule 97 and Rule 99 are subject to Rule 101 which provides for determination of questions relating to disputes as to right, title or interest in the property arising between the parties to the proceedings or their representatives on an application made under Rule 97 or Rule 99. Effectively, the said Rule does away with the requirement of filing of fresh suit for adjudication of disputes as mentioned above. Now, in the present case, Order 21 Rule 101 has no applicability as the appellant is neither entitled to make an application under Rule 97 nor Rule 99 for the reasons stated above. Accordingly, we find no substance in the argument raised by the learned counsel for the appellant."*

Therefore, once an application under Order 21 Rule 99 is filed, it is incumbent upon the Trial Court to consider all the rival claims including the right title and interest of the parties under Order 21 Rule 101 which bars a separate suit by mandating the execution court to decide the dispute.

17. As regards the question of limitation for execution of a decree passed in the suit for partition, this Court, in the decision in *Chiranji Lal* (supra), has categorically held that the time begins to run from the date of final decree and not

from the date on which it is engrossed on the stamp paper. For better appreciation, the relevant passage of the said decision is reproduced below:

> *"24. A decree in a suit for partition declares the rights of the parties in the immovable properties and divides the shares by metes and bounds. Since a decree in a suit for partition creates rights and liabilities of the parties with respect to the immovable properties, it is considered as an instrument liable for the payment of stamp duty under the Indian Stamp Act. The object of the Stamp Act being securing the revenue for the State, the scheme of the Stamp Act provides that a decree of partition not duly stamped can be impounded and once the requisite stamp duty along with penalty, if any, is paid the decree can be acted upon.*
>
> *25. The engrossment of the final decree in a suit for partition would relate back to the date of the decree. The beginning of the period of limitation for executing such a decree cannot be made to depend upon date of the engrossment of such a decree on the stamp paper. The date of furnishing of stamp paper is an uncertain act, within the domain, purview and control of a party. No date or period is fixed for furnishing stamp papers. No rule has been shown to us requiring the court to call upon or give any time for furnishing of stamp paper. A party by his own act of not furnishing stamp paper cannot stop the running of period of limitation. None can take advantage of his own wrong. The proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereupon and only thereafter the period of twelve years will begin to run would lead to absurdity. In Yeswant Deorao Deshmukh v. Walchand Ramchand Kothari [1950 SCR 852] it was said that the payment of court fee on the amount found due was entirely in the power of the decree holder and there was nothing to prevent him from paying it then and there; it was a decree capable of execution from the very date it was passed.*
>
> *26. Rules of limitation are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. As above noted, there is no statutory provision prescribing a time limit for furnishing of the stamp paper for engrossing the decree or time limit for engrossment of the decree on stamp paper and there is no statutory obligation on the Court passing the decree to direct the parties to furnish the stamp paper for engrossing the decree. In the present case the Court has not passed an order directing the parties to furnish the stamp papers for the purpose of engrossing the decree. Merely because there is no direction by the Court to furnish the stamp papers for engrossing of the decree or there is no time limit fixed by law, does not mean that the party can furnish stamp papers at its sweet will and claim that the period of limitation provided under Article 136 of the Act would start only thereafter as and when the decree is engrossed thereupon. The starting of period of limitation for execution of a partition decree cannot be made contingent upon the engrossment of the decree on*

the stamp paper. The engrossment of the decree on stamp paper would relate back to the date of the decree, namely, 7th August, 1981, in the present case. In this view the execution application filed on 21st March, 1994 was time barred having been filed beyond the period of twelve years prescribed under Article 136 of the Act. The High Court committed illegality in coming to the conclusion that it was not barred by limitation."

18. The above judgment was relied upon by the Constitutional Bench of this Court while deciding the validity of an unstamped agreement, wherein it was observed as under:

> ***Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899,*** **In re, (2024) 6 SCC 1 : 2023 SCC OnLine SC 1666**
>
> ***"255.*** *In Chiranji Lal v. Hari Das [Chiranji Lal v. Hari Das, (2005) 10 SCC 746] , a three-Judge Bench of this Court rejected the contention that an unstamped preliminary decree is not enforceable and, therefore, the period of limitation begins to run when the decree is engrossed on the stamp paper. The Stamp Act is a fiscal measure with the object to secure revenue for the State on certain classes of instruments. The Stamp Act is not enacted to arm the litigant with a weapon of technicality to meet the case of his opponent. As there is no rule which prescribes any time for furnishing of stamp paper or to call upon a person to pay stamp duty on a preliminary decree of partition, the proposition that period of limitation would remain suspended till stamp paper is furnished and decree engrossed thereon was rejected."*

19. Applying the ratio laid down in Chiranjilal case (Supra) to the facts of the present case, the High Court rightly set aside the order passed in the Execution Petition and remanded the matter to the trial court for fresh consideration, leaving all the issues including the independent right, title or interest claimed by the respondents in the property in question, to be adjudicated therein. Therefore, we do not find any infirmity or illegality in the judgment so rendered by the High Court, warranting our interference.

20. In view thereof, these Civil Appeals stand dismissed. However, it is open to the appellants to raise all the contentions available to them before the trial Court. Costs made easy.

21. Pending application(s), if any, shall stand disposed of.

….....J.
[PANKAJ MITHAL]

….....J.
[R. MAHADEVAN]

NEW DELHI
OCTOBER 14, 2024.