

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.6163-6164 OF 2019
(Arising out of SLP (C) Nos.7222-7223/2019)

MENKA GUPTA

Appellant

VERSUS

UMASHREE DEVI

Respondent

JUDGMENTUday Umesh Lalit, J.

1. Leave granted. These appeals challenge the correctness of the judgment and order dated 13.08.2018 passed by High Court of Judicature at Patna in CWJC No.11170 of 2010 and CWJC No.14075 of 2010.

2. Title Suit No.137/2007 was filed by the appellant in the Court of 1st Sub-Judge, District Siwan, seeking specific performance in respect of an oral agreement dated 10.10.2006. It was submitted that in pursuance of the agreement, a sum of Rs.50,000/- was made over to the original vendor and the plaintiff was put in partial possession of the suit property. It was further submitted that on 20.02.2007 the plaintiff had paid the balance sum of Rs.36,000/- in the Registrar's Office and all the formalities were

completed but at the stage of signing the documents, the vendor pleaded some physical discomfort and as such, the document could not be executed and that thereafter the vendor avoided execution of the documents.

3. The summons issued by the Trial Court on 17.06.2007 in said Title Suit No.137/2007 were said to have been refused to be accepted by the defendant-original vendor. Subsequently, an *ex parte* decree was passed by the Trial Court on 31.03.2008 in said suit.

4. The decree holder-appellant thereafter initiated proceedings to have the decree executed, at which stage the original defendant filed an application being Misc. Case No.43 of 2008 under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short "CPC") on 11.07.2008 to get the *ex parte* decree set-aside.

5. While said application was pending consideration, the original defendant-vendor executed a conveyance of the suit property on 06.11.2009, in favour of the present respondent. The attempts made by the decree holder to get the decree executed were obstructed by the respondent which led to proceedings under Order XXI Rule 97 of CPC getting initiated on 22.12.2009. In those proceedings, the respondent was impleaded on 12.01.2010.

6. The original defendant-vendor died on 22.01.2010.

7. Thereafter, the respondent filed an application under Order I Rule 10 read with Order XXII Rule 10 and Section 141 of CPC to have herself substituted in place of original defendant. The Sub-Judge, Siwan by his order dated 16.06.2010 dismissed Misc. Case No.43 of 2008 as having abated and also by a separate order of the same date rejected the prayer of the respondent herein to stay the execution proceedings. This led to the filing of CWJC No.11170 of 2010 and CWJC No.14075 of 2010 by the respondent in the High Court challenging afore-mentioned orders dated 16.06.2010. The petitions were allowed by the High Court and the issues were discussed as under:

“7. Thus, it appears that the petitioner is claiming his right, title and interest over the suit property on the basis of Mahadanama executed on 05.07.2006 followed by registered sale deed dated 06.11.2009. The respondent on the other hand filed title suit on 07.04.2007 on the basis of oral agreement.

8. In view of above facts I find that the petitioner is necessary party to the miscellaneous case as after the death of Durga Prasad it is the petitioner who would suffer loss in the event of dismissal of miscellaneous case. The heirs of Durga Prasad have lost their interest in the suit property. They have neither cause of action nor the right to sue the opposite party of Miscellaneous Case No.43 of 2008.”

8. In these appeals challenging the correctness of the view taken by the High Court we heard Mr. Joseph Aristotle, learned counsel for the appellant and Mr. Gaurav Agrawal, learned counsel for the respondent.

9. Mr. Joseph Aristotle, learned Counsel submitted that the respondent-purchaser of the suit property during pendency of litigation had no right to obstruct execution of decree passed by a competent court. He relied upon Rule 102 of Order XXI of CPC. In his submission, the respondent had no *locus standi* in the matter and his application for being impleaded in Miscellaneous Case No.43 of 2008 was rightly rejected by the Sub-Judge. He submitted that the High Court was in error in permitting such impleadment. Reliance was placed on the decision of this Court in ***Usha Sinha v. Dina Ram and others***¹ and particularly paragraphs 17, 23, 26 and 32, which are to the following effect:

“17. Rule 102 clarifies that Rules 98 and 100 of Order 21 of the Code do not apply to transferee pendente lite. That Rule is relevant and material and may be quoted in extenso:

“102. *Rules not applicable to transferee pendente lite.*—Nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.”

Bare reading of the Rule makes it clear that it is based on justice, equity and good conscience. A transferee from a judgment-debtor is presumed to be aware of the proceedings before a court of law. He should be careful before he purchases the property which is the subject-matter of litigation. It recognises the doctrine of *lis pendens* recognised by Section 52 of the Transfer of Property Act, 1882. Rule 102 of Order 21 of the Code thus takes into account the ground reality and refuses to extend helping hand to purchasers of property in respect of which litigation is pending. If unfair, inequitable or undeserved protection is afforded to a transferee pendente lite, a decree-holder will

¹ (2008) 7 SCC 144

never be able to realise the fruits of his decree. Every time the decree-holder seeks a direction from a court to execute the decree, the judgment-debtor or his transferee will transfer the property and the new transferee will offer resistance or cause obstruction. To avoid such a situation, the Rule has been enacted.

23. It is thus settled law that a purchaser of suit property during the pendency of litigation has no right to resist or obstruct execution of decree passed by a competent court. The doctrine of “lis pendens” prohibits a party from dealing with the property which is the subject-matter of suit. “Lis pendens” itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Rule 102, therefore, clarifies that there should not be resistance or obstruction by a transferee pendente lite. It declares that if the resistance or obstruction is offered by a transferee pendente lite of the judgment-debtor, he cannot seek benefit of Rules 98 or 100 of Order 21.

26. For invoking Rule 102, it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment-debtor. If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21.

32. In our judgment, the High Court was also right in observing that if the appellant succeeds in the suit and decree is passed in her favour, she can take appropriate proceedings in accordance with law and apply for restitution. That, however, does not preclude the decree-holder from executing the decree obtained by him. Since the appellant is a purchaser pendente lite and as she has no right to offer resistance or cause obstruction and as her rights have not been crystallised in a decree, Rule 102 of Order 21 of the Code comes into operation. Hence, she cannot resist execution during the pendency of the suit instituted by her. The order passed by the High Court, therefore, cannot be said to be illegal, unlawful or otherwise contrary to law.”

10. Mr. Gaurav Agrawal, learned Counsel on the other hand relied upon the decision of this Court in **Raj Kumar v. Sardari Lal and others**² where an application filed by a transferee *pendente lite* under Order IX Rule 13 of CPC was allowed. The plea that such a transferee could not be allowed to maintain the application under Order IX Rule 13 was expressly rejected. The following observations in paras 8 and 9 are noteworthy:

“8. A *lis pendens* transferee from the defendant, though not arrayed as a party in the suit, is still a person claiming under the defendant. The same principle of law is recognized in a different perspective by Rule 16 of Order 21 CPC which speaks of transfer or assignment *inter vivos* or by operation of law made by the plaintiff decree-holder. The transferee may apply for execution of the decree of the court which passed it and the decree will be available for execution in the same manner and subject to the same conditions as if the application were made by the decree-holder. It is interesting to note that a provision like Section 146 CPC was not to be found in the preceding Code and was for the first time incorporated in CPC of 1908. In Order 21 Rule 16 also an explanation was inserted through amendment made by Act 104 of 1976 w.e.f. 1-2-1977, whereby the operation of Section 146 CPC was allowed to prevail independent of Order 21 Rule 16 CPC.

9. A decree passed against the defendant is available for execution against the transferee or assignee of the defendant judgment-debtor and it does not make any difference whether such transfer or assignment has taken place after the passing of the decree or before the passing of the decree without notice or leave of the court.”

11. The scope of submissions available to an obstructionist under Order XXI Rule 97 of CPC would be restricted to consider whether he could

² (2004) 2 SCC 601

validly or lawfully obstruct the execution of the decree. On the other hand for a defendant who had moved an application under Order IX Rule 13 of CPC, the scope of the challenge would be to consider whether there was sufficient cause which prevented him from appearing when the proceedings were taken up or whether there was serious infirmity in service of the summons upon him. The scope of challenge and available submissions at these two stages are thus distinct and different and as such the observations of this Court in *Usha Sinha*¹ would not strictly govern and restrict the scope of an application on behalf of a transferee *pendente lite* at the stage of Order IX Rule 13 of CPC.

12. The decision in *Usha Sinha*¹ considered the matter from the stand point of scope of Order 21 Rule 102 and other related rules. On the other hand, the matter directly on the point is the decision of this Court in *Raj Kumar*² which was the case of transferee *pendente lite* filing an application under Order IX Rule 13 of the Code. In that context the attack on the ground of locus standi of such applicant was rejected in express terms.

The view taken by the High Court in the instant case is consistent with the law laid down in the case of *Raj Kumar*².

13. We, therefore, affirm the view taken by the High Court and see no ground to interfere in the matter. However, considering the fact that the litigation has been pending for more than a decade, we direct the concerned

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Court to dispose of Miscellaneous Case No.43 of 2008 as early as possible and preferably within one month from the date of receipt of this order. The parties shall appear before the Court on 14.08.2019. Needless to say that the parties shall maintain *status quo* with regard to the property in question till further orders.

14. The appeals stand disposed of accordingly. No costs.

.....J.
[UDAY UMESH LALIT]

.....J.
[VINEET SARAN]

NEW DELHI;
AUGUST 7, 2019

ITEM NO.2

COURT NO.8

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) Nos.7222-7223/2019

(Arising out of impugned final judgment and order dated 13-08-2018 in CWJC No.11170/2010, 13-08-2018 in CWJC No.14075/2010 passed by the High Court Of Judicature At Patna)

MENKA GUPTA

Petitioner(s)

VERSUS

UMASHREE DEVI

Respondent(s)

(IA No.72577/2019 - FOR EXEMPTION FROM FILING O.T.; and, IA No.37919/2019 - FOR EXEMPTION FROM FILING O.T.)

Date : 07-08-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. Joseph Aristotle, Adv.
Mr. Nitish Kumar Singh, Adv.
Mr. Shashank Shekhar Singh, AOR

For Respondent(s) Mr. Gaurav Agrawal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

These appeals are disposed of, in terms of the reportable judgment.

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

(MUKESH NASA)
COURT MASTER

(SUMAN JAIN)
BRANCH OFFICER

(Signed Reportable Judgment is placed on the File)