Supreme Court of India
P. Janardhana Rao vs Kannan & Others on 12 October, 2004
Author: Kapadia
Bench: Ashok Bhan Kapadia

CASE NO.:
Appeal (civil) 1664 of 1998

PETITIONER:
P. Janardhana Rao

RESPONDENT:
Kannan & others

DATE OF JUDGMENT: 12/10/2004

BENCH:
ASHOK BHAN S.H. KAPADIA

JUDGMENT:

J U D G M E N T KAPADIA, J.

Being aggrieved by the judgment and order dated 12.11.1997 passed by the High Court of Madras in C.R.P. No.2960 of 1995, dismissing Miscellaneous Petition No.600 of 1991 made by the decree holder under Order 21 Rule 97 of Code of Civil Procedure, this civil appeal has been preferred by grant of special leave.

For the sake of convenience, the parties herein are referred to as they are arrayed in the Executing Court.

The facts giving rise to this civil appeal are as follows: P. Janardhana Rao, the plaintiff filed an Ejectment Suit No.44 of 1989 in the Court of Small Causes, Madras for getting possession from Chelladurai and Bhagyalakshmi. The suit was decreed on 31.7.1990. Pursuant to the said decree, the plaintiff filed Execution Petition no.175 of 1991 for obtaining delivery of possession. Three obstructionists Kannan, Krishnan and Raji resisted the plaintiff decree holder from taking possession. In view of the said obstruction, the decree holder preferred miscellaneous petition No.600 of 1991 under order 21 rule 97 CPC for removal of the obstruction put up by the aforestated three obstructionists (respondents herein).

In the said miscellaneous petition no.600/1991, the executing Court recorded the evidence. PW1 deposed that in 1982 he purchased the suit property admeasuring 2300 sq. ft. situate in Friends Avenue, Razack Garden, Arumbakkam, Madras-106 vide Ex.P1, from Srinivasa Iyengar; that in 1982 when he bought the suit property, the three obstructionists were not there; that he had engaged two labourers, Chelladurai and Bhagyalakshmi, to construct his house; that on completion, Chelladurai and Bhagyalakshmi refused to vacate and, therefore, PW1 instituted the ejectment suit no.44 of 1989 in the Court of Small Causes, Madras. The suit was decreed. Appeal therefrom was dismissed. PW1 in his deposition further stated that the aforestated three obstructionists Kannan, Krishnan

and Raji were put up by the judgment-debtors. In cross-examination, PW1 stated that he knew Kannan, Krishnan and Raji since 1980. He further stated that there were three houses in the suit property since 1980.

RW1, Thiru Krishnan, one of the obstructionists; deposed in his evidence that they were residing in the suit property from 1965; that the three houses belonged to them; that he resided in Vathalagundu Arumugam Nagar abutting Friends Avenue; that since 1965, he has been residing in Vathalagundu Arumugam Nagar; that he did not possess electricity bills of 1965; that he had not encroached upon the suit property; that he had electricity bills of 1993; that he had constructed a house on the suit property in 1965; and that he had paid property taxes only after 1989.

On the above evidence, the executing Court allowed the miscellaneous petition no.600 of 1991, holding that there was no evidence of possession of the obstructionists from 1965 as claimed.

Being aggrieved, the obstructionists came before the High Court by way of revision under section 115 CPC. By the impugned judgment, the High Court allowed the revision instituted by the obstructionists and dismissed the application of the decree-holder under order 21 rule 97, holding, that the three obstructionists were in occupation since 1980 i.e. prior to filing of the Ejectment Suit No.44/1989. The High Court further held that there was no evidence to show that the three obstructionists were inducted by the judgment-debtors. In this connection, the High Court relied upon the statement of PW1 that he knew the obstructionists since 1980 and that they were residing in the houses in the suit property from 1980. Consequently, the revision filed by the three obstructionists was allowed. Hence, this civil appeal.

Order 21 Rule 97 CPC is the provision for removal of the person bound by the decree who does not vacate. It takes into account a situation where resistance to possession is offered by the judgment-debtor or any other person bound by the decree which will include the claim of a person who claims to be in possession in his own right and independently of the judgment- debtor but whose claim ex-facie is unsustainable. Where, however, resistance is offered or where obstruction proceeds from the claimant claiming to be in possession in his own right and whose claim cannot be rejected on the ground of want of good faith, without investigation, the decree-holder must proceed under order 21 rule 97. [See: Ragho Prasad v. Pratap Narain Agarwal reported in 1969 All. L.J. 929].

In the case of Noorduddin v. Dr. K. L. Anand reported in [(1995) 1 SCC 242], it has been held as follows: "8. Thus, the scheme of the Code clearly adumbrates that when an application has been made under Order 21, Rule 97, the court is enjoined to adjudicate upon the right, title and interest claimed in the property arising between the parties to a proceeding or between the decree- holder and the person claiming independent right, title or interest in the immovable property and an order in that behalf be made. The determination shall be conclusive between the parties as if it was a decree subject to right of appeal and not a matter to be agitated by a separate suit. In other words, no other proceedings were allowed to be taken. It has to be remembered that preceding Civil Procedure Code Amendment Act, 1976, right of suit under Order 21, Rule 103 of 1908 Code was available which has been now taken away. By necessary implication, the legislature relegated the parties to an adjudication of right, title or interest in the immovable property under execution and

finality has been accorded to it. Thus, the scheme of the Code appears to be to put an end to the protraction of the execution and to shorten the litigation between the parties or persons claiming right, title and interest in the immovable property in execution.

9. Adjudication before execution is an efficacious remedy to prevent fraud, oppression, abuse of the process of the court or miscarriage of justice. The object of law is to mete out justice. Right to the right, title or interest of a party in the immovable property is a substantive right. But the right to an adjudication of the dispute in that behalf is a procedural right to which no one has a vested right. The faith of the people in the efficacy of law is the saviour and succour for the sustenance of the rule of law. Any weakening like in the judicial process would rip apart the edifice of justice and create a feeling of disillusionment in the minds of the people of the very law and courts. The rules of procedure have been devised as a channel or a means to render substantive or at best substantial justice which is the highest interest of man and almameter (sic) for the mankind. It is a foundation for orderly human relations. Equally the judicial process should never become an instrument of oppression or abuse or a means in the process of the court to subvert justice. The court has, therefore, to wisely evolve its process to aid expeditious adjudication and would preserve the possession of the property in the interregnum based on factual situation. Adjudication under Order 21, Rules 98, 100 and 101 and its successive rules is sine qua non to a finality of the adjudication of the right, title or interest in the immovable property under execution.

10. The question is whether the executing court was right in dismissing the application on the ground that the dispute was adjudicated in RFA No.305 of 1986 or as held by the High Court that the dispute was decided in the writ proceedings referred to earlier. The execution court is enjoined to adjudicate the claim or the objection or the claim to resistance. As seen, Rule 97 enables such a person to make an application which must be independent of the judgment-debtor or a person having derivate right from the judgment-debtor. The applicant in his own right must be in possession of the property ."

Applying the above tests, we may now examine the question whether the obstructionists were in possession of the property in their own right, as claimed. In this regard, we may now examine the evidence on record.

PW1, in his examination-in-chief, deposed that the three obstructionists were set up by the said Chelladurai and Bhagyalakshmi. It was the case of the obstructionists that they were in possession of the suit property since 1965. However, no evidence was produced. On the contrary, RW1 stated in his evidence that he started paying property tax from 1989 and that prior thereto he had not paid the property tax. As stated above, PW1 instituted the ejectment suit in the Small Causes Court in 1989. Therefore, the evidence has been created by the obstructionists only from 1989. No electricity bills from 1965 onwards have been produced. No ration card has been produced. No proof of residence from 1965 has been produced. The High Court has relied upon the statement of PW1 stating that he knew three obstructionists since 1980 and that three houses existed in the suit property from 1980. In our view, the trial Court was right in examining the entire evidence on record and coming to the conclusion that there was no evidence from the side of the obstructionists to show that they were in possession of the suit premises prior to the filing of ejectment suit no.44 of

1989. As stated above, on the contrary, the property tax receipts show that the obstructionists have entered into occupation from 1989. The High Court has failed to appreciate the entire evidence on record. Merely because PW1 knew the three obstructionists from 1980 would not be sufficient to conclude that three obstructionists came to reside in the suit property from 1965, as alleged. There is no evidence of residence from the side of the obstructionists between 1965 and 1989. In the circumstances, the High Court erred in dismissing the decree holder's application under order 21 rule 97 CPC.

For the reasons stated above, the appeal is allowed. The impugned judgment and order of the High Court is set aside and that of the execution Court is restored. The said miscellaneous petition no.600 of 1991 in execution petition no.175 of 1991 is made absolute. However, in the facts and circumstances of the case, there shall be no order as to costs.