



Gurdev Singh v. Narain Singh, (SC) : Law Finder Doc Id # 134867

**SUPREME COURT OF INDIA**

Before :- S.B. Sinha and H.S. Bedi, JJ.

Civil Appeal No. 5237 of 2007 (@ SLP (C) No. 5476/2006). D/d. 12.11.2007.

Gurdev Singh - Appellant  
Versus  
Narain Singh - Respondent

For the Appellant :- Mr. Sarup Singh, Sr. Advocate with Mr. Yash Pal Dhingra and Mr. Kuldip Singh, Advocates.

For the Respondent :- Mr. G.S. Punia, Mr. Davender Mohan Verma, and Ms. Minakshi Vij, Advocates.

**Civil Procedure Code, Section 47 - Civil Procedure Code, Order 21 Rule 10 - Execution of decree - Executing Court cannot go behind the decree.**

[Para 9]

ORDER

Leave granted.

2. Respondent herein filed a suit for permanent injunction against the appellant. The suit was marked as Civil Suit No. 226 of 1987. A decree for permanent injunction was passed by the learned trial Judge on 19.1.1989, the operative portion whereof reads as under :

" This suit comes today before me(Balbir Singh PCS, Addl. Senior Sub Judge Jagraon) for final disposal, in the presence of the counsel for the parties, it is ordered that :-(illegible) the suit of the plaintiff is decreed against the defendant for a permanent injunction restraining the defendant from planting tree on the Khasra No. 17/2 on the one side and Khasra No. 218/1 and 17/1 on the other side situate in the area of village Abbupura Tehsil, Jagraon, District Ludhiana peculiar circumstances of the case, the parties are left to their own costs."

3. The decree holder filed an application for execution of the decree praying, *inter alia*, for removal of the tree from the lands in question. A Commissioner was appointed. He submitted a report stating as under :

- i) I compared the site plan with the situation of the disputed property where tree of Bohar exists.
- ii) I measured the distance of Bohar tree from the common butt of Khasra Nos. 17/2 and 218/1 with the help of a measurement tape. The centre point of Butt upto the centre point of radius of Bohar tree is 11 feet i.e. 2 karams.
- iii) The branches of Bohar tree comes across the common Butt into Khasra No. 218/1 approximately 6/7 feets.
- iv) I prepared a rough site plan at the spot, which is also attached herewith. According to my observation the half portion of the Bohar tree falls within two karams from the common Butt of properties of the parties."

4. The learned Commissioner in his report did not state that the Bohar tree was planted after passing of the decree.

5. The executing Court relying on or the basis of the said report as also some decisions of this Court while holding that the executing Court has the requisite jurisdiction to construe a decree, opined as under :

" Now applying ratio of the above said cases this Court has to see what was spirit of the decree which was under execution and clear that the plain meaning of the decree is that there should no tree within two karams on either side of the common boundary of the parties and if it is there, the executing court can very well order its removal in order to give effect to the spirit of the decree. In the present case, it has been reported by the Local Commissioner that the tree is within 2 karams. Moreover, J.D. does not plead any claim over that tree. Rather he pleads it to be a naturally grown tree. So,in these circumstances direction is given to the J.D. to remove the trees which is standing within 2 karams of the common butt within a period of one month from today."

6. By reason of the impugned judgment the High Court has affirmed the said order.
7. Mr. Swarup Singh, learned senior counsel appearing on behalf of the appellant would submit that the executing Court as also the High Court committed a manifest error in interpreting the decree.
8. We agree with the said contention. A bare perusal of the decree in question would clearly demonstrate that the appellant herein was restrained by a permanent injunction from planting any tree on khasra Nos. 17/2 on the one side and khasra No. 218/1 and 17/1 on the other side. The decree did not speak of removal of any tree which had already been planted. The executing Court, as noticed hereinbefore, while interpreting the said decree proceeded completely on a wrong premise to hold that there should not be any tree within two karams on either side of the common boundary of the parties. Such an interpretation evidently is not in consonance with the tenor of the decree. A jurisdictional error,thus, has been committed by the High Court.
9. It is well stated that executing Court cannot go behind the decree. As the decree did not clothe the decree holder to pray for execution of the decree by way of removal of the trees, the same could not have been directed by the learned executing Court in the name of construing the spirit of the decree under execution.
10. We, therefore, set aside the impugned judgment and remit the matter to the executing Court for determination of the question as to whether the Bohar tree in question was in existence prior to passing of the decree or not. The executing Court thereafter may proceed with the matter in accordance with law.

The appeal is allowed. No costs.

Appeal allowed.

Product S.No.1294388414

This judgement ranked 1 in the hitlist.

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Shivshankar Gurgar v. Dilip (SC) : Law Finder Doc Id # 519670

SUPREME COURT OF INDIA

Before :- Ranjana Prakash Desai and J. Chelameswar, JJ.

Civil Appeal No . 52 of 2014 [Arising out of SLP ( Civil ) No . 21560 of 2011]. D/d. 3.1.2014.

Shivshankar Gurgar - Appellant

Versus

Dilip - Respondent

For the Appellant :- T. Mahipal, Advocate.

A. Madhya Pradesh Accommodation Control Act, 1961, Sections 12(1)(a) and 13 - Eviction of tenant - Arrears of rent - Suit came to be decreed ex-parte - Parties entered into a compromise - Tenant acknowledged his liability to pay arrears of rent to the landlord - Ex parte decree was set aside pursuant to compromise - Tenant make to deposit of arrears within the stipulated time - Amount not deposited - Tenant liable to be evicted - Held :-

The respondent/judgment debtor cannot flout the compromise decree with impunity on the ground that his opponent entered the compromise in view of some serious dispute about the maintainability of his claim.

[Paras 14, 24 and 27]

B. Madhya Pradesh Accommodation Control Act, 1961, Sections 12(1)(a) and 13 - Eviction of tenant - Arrears of rent - Execution proceedings - Tenant acknowledged his liability to

pay arrears of rent to the landlord - He failed to make deposit of arrears within stipulated time - Landlord filed execution proceedings - Tenant made payment in the Executing Court but beyond the stipulated period - Tenant liable for eviction. Held :-

Payment or the deposit of rent into the Court by the judgment debtor (tenant) is contemplated only during the pendency of the suit for eviction or an appeal (by the tenant) against a decree or order of eviction - Section 13 has no application to the execution proceedings of a decree for eviction.

[Para 24]

C. Madhya Pradesh Accommodation Control Act, 1961, Sections 12(1)(a) and 13 - Civil Procedure Code, 1908, Order 21 - Execution of decree - Executing court cannot go beyond the decree - It has no jurisdiction to modify a decree - It must execute the decree as it is.

[Para 24]

Cases Referred :

Deepa Bhargava v. Mahesh Bhargava, 2009(1) R.C.R. (Civil) 507 : 2009(1) Recent Apex Judgments (R.A.J.) 202 : (2009) 2 SCC 294.

Hukumchand v. Bansilal, AIR 1968 SC 86.

Nai Bahu v. Lala Ramnarayan, 1978(1) R.C.R.(Rent) 211 : (1978) 1 SCC 58.

#### JUDGMENT

Chelameswar, J. - Leave granted.

2. The appellant filed civil suit under section 12(1)(a) of the Madhya Pradesh Accommodation Control Act, 1961 (hereinafter referred to as the "Act") for eviction of the respondent and recovery of arrears of rent. On 16.4.2002 the suit came to be decreed ex parte. The said decree came to be set-aside on an application filed by the respondent with a direction to file the written statement and also deposit the entire arrears within 30 days in the court.

3. On 25.7.2004 a compromise memo signed by both the parties came to be filed under which the respondent acknowledged his liability to pay arrears of rent to the appellant to the tune of L 11710/- and also costs quantified to L 4000/-. The respondent also agreed to pay the amount within a period of six months. It was also specifically agreed as follows:

"H. If the defendant violates any of the aforesaid conditions, the plaintiff shall be entitled to get the vacant possession of suit accommodation from the defendant wherein defendant shall have no objection."

4. In view of the said compromise, the matter was referred to the lok adalat and the civil suit was decreed in terms of the compromise.

5. On 21.7.2005 the appellant filed an application for the execution of the compromise decree alleging that the respondent failed to fulfil his obligations arising out of the compromise decree and, therefore, the appellant is entitled to recover possession of the premises. The events that followed are narrated by the High Court in the judgment under appeal as follows -

"On 04/10/2005 after appearance respondent filed objections wherein it was alleged that signatures were obtained by the petitioner on the said compromise under undue influence and no receipt was issued by the petitioner for a sum of L 10,000/-, which was paid by the respondent. The said application was dismissed by the learned Executing Court vide order dated 24/10/2005 and it was directed that since the Executing Court cannot go behind the decree, therefore, warrant of possession be issued. Again on 09/11/2005 objections were filed in which adjustment of L 25,000/- was claimed. Vide order dated 22/11/2005 objections filed by the respondent was dismissed, however 15 days time was granted to deposit the amount. Since the amount was deposited by the respondent, therefore, vide order dated 23/12/2005 Executing Court dismissed the execution holding that since the relief of possession of suit accommodation was in alternate and the respondent has deposited the amount though belatedly, therefore, petitioner is not entitled for alternative relief and the execution petitioner was dismissed, against which an appeal was filed on 07/01/2006 and vide order dated 16/03/2006 learned Appellate Court held that the Executing Court has no jurisdiction to go behind the decree but no relief was granted to the petitioner against which Writ Petition was filed by the petitioner on 05/02/2006, which was numbered as WP No. 6163/06 and vide order dated 08.02.2007 Writ Petition was allowed and the matter was remanded to the Executing Court with direction to decide the points framed by the Writ Court for determination."

(emphasis supplied)

6. The operative part of the order reads as follows:

"10. It is for this reason, I am constrained to remand the case to executing court for deciding the issue again arising out of the execution application filed by the petitioner. The executing court will decide the application keeping in view the law laid down in Nai Bahu v. Lala Ramnarayan and others 1978(1) R.C.R.(Rent) 211 : (1978) 1 SCC 58 case and any other case which governs the field and will record categorical finding on following issues:

1. Whether compromise decree dated 25.7.2005 is nullity in so far as it relates to a relief of eviction of respondent from the suit house?

2. If not then whether default alleged is made out by the petitioner so as to entitle him to execute the decree for eviction?

7. On remand, by the order dated 17.4.2007, the executing court recorded a finding that the respondent had paid the entire amount due under the compromise decree in the executing court although such a payment was made beyond the period of six months stipulated in the compromise decree. Further, the executing court examined the submission made by the respondent that in view of section 13(1)(a) of the Act the compromise decree insofar as it provided for eviction of the respondent in the event of his failure to make the deposit of arrears within the stipulated time is void. The operative portion of the order of the executing court reads as follows:

"20. . Hence, in respect of issue No. A it is decided that the compromise decree is void in respect of eviction relief and no such eviction can be ordered contrary to the provisions of M.P. Accommodation Control Act for default in payment of rent. Since executable part of compromise decree has been held to be void, in such circumstances the executing court cannot pass an order for eviction for default in payment of arrears of rent or remaining part of arrears of rent. Accordingly issue No. B is decided."

8. Aggrieved by the said order, the appellant herein again approached the High Court by way of a Civil Revision Petition No. 173 of 2007. The High Court by its judgment under appeal dated 28.10.2010 dismissed the revision. Hence this appeal.

9. The reasons recorded by the High Court are as follows-

"8. Undoubtedly entire rent was deposited by the respondent. It is also not in dispute that the amount was not deposited within a period of six months as per terms and condition of the compromise decree. However, later on the rent was deposited. Since the ground was available to the petitioner under Section 12(1)(a) of M.P. Accommodation Control Act as the respondent did not tender the rent within a period of two months from the date of notice and also did not deposit the rent within one month from the date of receipt of summons under Section 13(1) of the Act, therefore, there was no reason for the petitioner to enter into compromise and condone the delay in depositing the rent and give further time to the respondent of another six months to deposit the rent. It appears that since there was serious dispute between the parties relating to the title of the petitioner, therefore, the concession was given by the petitioner. Vide order dated 23.11.2005 learned Executing Court has further extended the time by another 15 days for depositing the arrears of rent keeping in view the good conduct of the respondent.

9. From perusal of the order dated 23.11.2005 it appears that the amount of L 10,000/- was deposited by the respondent on that day only. Thus, vide judgment and decree dated 25.07.2004 respondent was required to deposit the arrears within six months which expired on 24.01.2005. In execution petition, time was further extended by 15 days vide order dated 23.11.2005. The order dated 23.11.2005 was not challenged by the petitioner, meaning thereby the petitioner agreed with the order whereby time was further extended.

10. Apart from this if the rent is deposited by the tenant as per Section 13(1) of the Act, then respondent is entitled for protection against eviction under Section 12(3) and 13(5) of the Act and in case of default for three consecutive months another suit for eviction can be filed against respondent. In the facts and circumstances of the case, this Court is of the view that no illegality has been committed by the learned Executing Court in dismissing the execution petition in full satisfaction. Hence, petition filed by the petitioner has no merits and the same is dismissed."

10. It is argued by the learned counsel for the appellant that the executing court erred in coming to the conclusion that the compromise decree is inconsistent with the section 13 of the Act and the High Court simply failed to record its finding on the correctness of the order of the executing court but went astray.

11. On the other hand, the learned counsel for the respondent submitted that the executing court's conclusion that the compromise decree insofar as it provided for the eviction of the respondent is void and calls for no interference in view of section 13 of the Act even though the High Court failed to examine the said question.

12. The High Court did not examine the correctness of the conclusion of the executing court that the compromise decree insofar as it pertained to the eviction of the respondent in the event of his failure to deposit the arrears of rent within time stipulated in the compromise decree is inconsistent with the provisions of the Act and therefore void.

13. From the judgment under appeal, the relevant portion of which is extracted earlier at para 9, it appears that the High Court dismissed the case of the appellant on three grounds (i) that the appellant need not have entered into a compromise which led to the decree. According to the High Court, such a compromise was entered into by the appellant as in the view of the High Court - there was a serious dispute about the title of the appellant (ii) When the execution petition was filed by the appellant, the executing court by its order dated 23.11.2005 granted 15 days time to the respondent to pay the balance of the arrears of rent. The appellant did not choose to challenge the said order. According to the High Court, such failure of the appellant implies that the appellant acquiesced in the said order, hence, the appellant/landlord was not entitled for the recovery of the possession of his property; (iii) in view of the fact that the respondent eventually deposited the arrears of rent his possession is required to be protected in view of section 12(3) and 13(5) of the Act.

14. We are of the opinion that all the reasons given by the High Court are unsustainable in law.

The reasons which compelled the appellant to enter the compromise are irrelevant for the issue at hand. The respondent/judgment debtor cannot flout the compromise decree with impunity on the ground that his opponent entered the compromise in view of some serious dispute about the maintainability of his claim. The conduct of the appellant in entering the compromise only debars the appellant to recover possession within the period of six months from the date of the compromise decree whether the respondent paid the arrears of rent or not till the last date. If the respondent paid the said amount any time within the period of six months, the appellant would be debarred from seeking the eviction of the respondent on the cause of action which led to the filing of the eviction suit.

15. Coming to the second reason i.e., the failure of the appellant to challenge the order of the executing court dated 23.11.2005 (by which the executing court granted 15 days time to the respondent to deposit the balance of the arrears of rent) debar the appellant to recover possession of the property in dispute is equally untenable, because:

(i) in our opinion, the order of the executing court dated 23.11.2005 is beyond his jurisdiction and a nullity. The only source which confers powers on the civil court to enlarge time is found under Section 148 of the Code of Civil Procedure which reads as follows:-

148. Enlargement of time - Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period not exceeding thirty days in total, even though the period originally fixed or granted may have expired.

It is obvious from the language of the Section, such a power can be exercised only in a case where a period is fixed or granted by the court for doing of any act prescribed by this Court. In a compromise decree such as the one on hand, the stipulation that the judgment debtor is required to make the payment of the money within a specified period is a stipulation by agreement between the parties and it is not a period fixed by the court. Therefore, Section 148 CPC has no application to such a situation. We are fortified by the decision of this court in *Hukumchand v. Bansilal and others AIR 1968 SC 86*.

(ii) In our opinion, the order dated 23.11.2005 virtually amounts to the modification of the decree and is without jurisdiction on the part of the executing court, therefore, a nullity.

It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. This Court in *Deepa Bhargava and Another v. Mahesh Bhargava and Others [2009(1) R.C.R.(Civil) 507 : 2009(1) Recent Apex Judgments (R.A.J.) 202 : (2009) 2 SCC 294]* held thus:-

"9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is."

16. It is well settled that such a void order can create neither legal rights nor obligations. Therefore, the appellant cannot be denied his right to recover possession of the property in dispute on the ground that he did not choose to challenge such a void order.

17. The third reason of the High Court and the conclusion of the executing court that the compromise decree insofar as it provided for eviction of the tenant in the event of his failure to pay the arrears of rent within a period of six months from the decree is contrary to the provisions of the Act are interlinked. Therefore, we are required to examine the scope of sections 12 and 13 of the Act insofar as they are relevant for the present purpose.

18. Section 12(1) of the Act restricts the right of landlord to evict his tenant only on the grounds enumerated in the said section:

12. Restriction on eviction of tenants. (1) Notwithstanding anything the contrary contained in any other law or contract, no suit be filed in any civil court against a tenant for his eviction from any accommodation except one of more of the following grounds only, namely -

19. The only ground urged by the appellant in his suit is that the tenant fell in arrears of rent. Such a ground is one of the grounds in section 12(1)(a) of the Act which enables the landlord to evict the tenant if he could successfully establish that the tenant did in fact fall in arrears of rent and had neither tendered nor paid the amount within the period specified under Section 12(1)(a) despite a demand. Section 12(1)(a) reads as follows:-

12(1)(a) that the tenant has neither paid nor tendered the whole of the arrears of the rent legally recoverable from him within two months of the date on which a notice of demand for the arrears of rent has been served on him by the landlord in the prescribed manner."

20. Section 13(1) of the Act stipulates that the tenant shall either deposit in the court or pay to the landlord an amount calculated at the rate of rent at which it was prayed for by the landlord for various periods specified therein (the details of which are not necessary for the present). Such a deposit or payment is required to be made in two contingencies. They are:-

13. When tenant can get benefit of protection against eviction.(1) On a suit or any other proceeding being instituted by a landlord in any of the grounds referred to in section 12 or in any appeal or any of other proceeding by a tenant against any decree or order for his eviction, the tenant shall, within one month of the service of writ of summons or notice of appeal or of any other proceeding, or within one month of institution of appeal or any other proceeding by the tenant as the case may be, or within such further time as the court may on an application made to it allow in this behalf, deposit in the court or pay to the landlord, an amount calculated at the rate of rent at which it was prayed, for the period for which the tenant may have made default including the period subsequent thereto up to the end of the month previous to that in which the deposit or payment is made and shall thereafter continue to deposit or pay, month by the 15th of each succeeding month a sum equivalent to the rent at that rate till the decision of the suit, appeal or proceeding as the case may be.

(i) upon institution of the suit for eviction of the tenant irrespective of the ground on which eviction is sought; or

(ii) in an appeal or in a proceeding by the tenant against the decree or order of eviction.

It is further stipulated that such a deposit or payment is required to be made within a period of one month of the service of the summons, if the deposit is being made during the pendency of the suit or within a period of one month from the date of institution of appeal or other proceeding as the case may be. Further, the said sub-section also recognizes the authority of the court to extend in its discretion the said period of one month on an application made to it. Sub-section (2) provides for the procedure in case of any dispute regarding the rate of rent payable whereas sub-section (3) provides for the procedure to be followed in case of any dispute regarding the person to whom the rent is payable.

(2) If in any suit or proceeding referred to in sub-section (1) there is any dispute as to the amount of rent payable by the tenant, the court shall, on a plea made either by landlord or tenant in that behalf which shall be taken at the earliest opportunity during such suit or proceeding, fix a reasonable provisional rent, in relation to the accommodation to be deposited or paid in accordance with the provisions of sub-section (1) and no court shall, save for reasons to be recorded in writing, entertain any plea on this account at any subsequent stage.

21. The submission that found favour with the executing court is that in view of section 13.

" the decree of the aforesaid Lok Adalat that in default of payment of arrears of rent the judgment debtor shall be liable to be evicted, cannot be enforced because according to Section 13 of M.P. Accommodation Control Act, if the judgment debtor pays the rent to the landlord within one month from the date of issuance of summon or within the stipulated time given by the court on an application so made by the judgment debtor, then he will be entitled for protection from eviction under Section 12 M.P. Accommodation Control Act, thus clearly entire decreetal amount has been paid in the execution proceeding, therefore, the judgment debtor shall be entitled for protection from eviction."

22. Sub-section (5) declares that if a tenant makes deposit or payment as required under sub-section (1) or (2), no decree or order for recovery of possession of the accommodation can be passed. Sub-section (5) only protects the defaulting tenant in possession in the event of his complying with the requirement of Section 13(1) or (2) only in those cases where the eviction is sought on the ground of arrears of rent falling under section 12(1)(a).

(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the court may allow such cost as it may deem fit to the landlord.

23. The case of the appellant is one falling under section 12(1)(a) and, therefore, the learned counsel for the respondent placed reliance on Section 13 (5) to sustain the conclusion of the executing court. Section 13(5) reads as follows:-

"(5) If a tenant makes deposit or payment as required by sub-section (1) or sub-section (2), no decree or order shall be made by the court for the recovery of possession of the accommodation on the ground of default in the payment of rent by the tenant, but the court may allow such cost as it may deem fit to the landlord."

24. A reading of Section 13, in our view clearly indicates that the payment or the deposit of rent into the court by the judgment debtor (tenant) is contemplated only during the pendency of the suit for eviction or an appeal (by the tenant) against a decree or order of eviction. Section 13 has no application to the execution proceedings of a decree for eviction.

25. The language of Section 13(1) is very clear and explicit in this regard. We fail to understand as to how the Court could read into Section 13, a possibility of enabling the judgment debtor (tenant) to protect his possession by making the payment during the execution proceedings in spite of the fact that he had already been adjudged to be in default of payment of the rent to the landlord. Such an interpretation of Section 13 would be wholly destructive of Section 12(1)(a). Therefore, not only the language of Section 13(1), but also an irreconcilable inconsistency that would arise between Section 12(1)(a) and Section 13(1) if the interpretation placed by the executing court is accepted - in our view is sufficient to hold that the executing court's interpretation of Section 13(1) is unsustainable.

26. Coming to the decision of this Court in Smt. Nai Bahu v. Lala Ramnarayan and others 1978(1) R.C.R.(Rent) 211 : (1978) 1 SCC 58, all that this Court held is that a landlord whose right to seek the eviction of his tenant is restricted by a statute (to the grounds specified in the statute) cannot successfully evict the tenant only on the basis of a compromise decree passed in a suit for eviction of the tenant. Apart from the consent of the tenant, one of the statutorily stipulated grounds rendering the tenant liable for eviction must necessarily exist for the validity of such a decree. In other words, this court held that a tenant who suffered a consent decree can still raise a question that none of the statutory

conditions existed which render him liable for eviction when the consent decree came to be passed.

27. In the case on hand the tenant was clearly in arrears of the rent which fact is acknowledged by the compromise memo signed by the tenant which was incorporated in the decree. Looked at any angle, we are not able to agree with the judgment under appeal, nor able to sustain the executing court's order dismissing the landlord's execution petition. The appeal is accordingly allowed. The execution petition filed by the appellant is also allowed. The executing court will now take necessary steps for evicting the respondent from the disputed premises and handing over the possession of the same to the appellant.

28. In the facts and circumstances of the case, there will be no order as to costs.

This judgement ranked 3 in the hitlist.



C. Gangacharan v. C. Narayanan, (SC) : Law Finder Doc Id # 27152

**SUPREME COURT OF INDIA**

Before :- B.N. Kirpal and R.P. Sethi, JJ.

Civil Appeal No. 1782 of 1989. D/d. 14.12.1999.

C. Gangacharan - Appellant  
**Versus**  
C. Narayanan - Respondent

For the Appellant :- Mr. T.L.V. Iyer, Senior Advocate with Mr. V.B. Saharya, Advocate for M/s. Saharya & Co., Advocates.

For the Respondent :- Mr. E.M.S. Anam, Advocate.

**A. Civil Procedure Code, Section 47 - Execution - Executing Court cannot go behind the decree of a court of competent jurisdiction except when the decree is void ab initio or without jurisdiction.**

[Para 4]

**B. Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 - Trustee - The provisions of the ordinance do not prohibit a suit being filed against a trustee for the recovery of the trust property.**

[Para 4]

Case referred :-

[R. Rajagopal 'Reddy \(Dead\) by LRs. v. Padmini Chandrasekharan \(Dead\) by LRs., 1995\(2\) SCC 630.](#)

ORDER

**R.P. Sethi, J.** - There is more than one reason for allowing this appeal. It appears that the appellant had sent money from abroad to the respondent to enable him to purchase immovable property in the name of the appellant. The respondent purchased properties in his own name and in the names of his other brothers in India. The appellant on 20th July, 1983 filed O.S. No. 349 of 1983 for possession of the suit property or its market value. The case of the appellant was that the money which was sent was wrongly utilised in purchasing the properties in the name of the respondent and the brothers instead of purchasing the same in the name of the appellant.

2. On 31st July, 1985, suit for possession was decreed with costs and *mesne profits* were to be determined in execution proceedings. The respondent filed an appeal to the High Court which dismissed the same on 27th August, 1987, *inter alia*, holding as follows :

"There is no evidence in this case to show that the plaintiff wanted to benefit the defendants when he provided funds for purchase of landed properties. On the other hand, the evidence is overwhelming in this case to the effect that money was sent by the plaintiff to the defendant in O.S. No. 349 of 1983 for the specific purpose of purchasing landed properties in the name of the plaintiff, but, instead, he purchased the properties in the name of himself and his other brothers with the fund so provided by the plaintiff. Therefore it has to be held that the plaintiff is the beneficial owner and he is entitled to recover possession of the plaint schedule properties from the defendants in these suits. In our view this is a case where Section 82 of the Indian Trusts Act squarely applies."

A special leave petition filed by the respondent was dismissed by this Court on 7th April, 1988.

3. The appellant then filed an execution application being E.P. No. 90/88 before the trial court. Before the said application was disposed of, on 19th May, 1988 the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 was promulgated. Basing on this Ordinance, objections were filed by the respondent to the effect that the decree could not be executed in view of the provisions of the said Ordinance. The executing court disallowed the objections and thereafter the respondent filed a revision petition before the High Court. By judgment dated 2nd August, 1988, the petition was allowed and in the impugned judgment it was observed that the said Ordinance of 1988 prohibited the recovery of possession of the suit property which was being held by the respondent as a Benami of the appellant herein.

4. It is now well settled that the executing court cannot go behind the decree of a court of competent jurisdiction except when the decree is void *ab initio* or without jurisdiction. In the present case, the High Court on 27th August, 1987, as is evident from the passage quoted hereinabove, had given a categorical finding to the effect that the respondent herein was only a trustee and the case was governed by Section 82 of the Indian Trusts Act. Section 4 which contains the prohibition to recover the property held Benami expressly provides in sub-section (3), clause (b) that the said Section is not to apply, *inter alia*, in a case where the property is held in the name of a trustee. In view of the finding of the High Court in its judgment of 27th August, 1987 that the property was being held in the name of the respondent as a trustee, the question of the respondent invoking the provisions of the Benami Transactions Ordinance or the Act did not arise. The provisions of the Act did not prohibit a suit being filed against a trustee for the recovery of the trust property.

5. That apart, this Court in **R. Rajagopal Reddy (Dead) by LRs. and Others v. Padmini Chandrasekharan (Dead) by LRs., 1995(2) SCC 630**, has held that the said Act and the Ordinance were not retrospective in operation and the Act did not apply to pending suits which had already been filed and entertained prior to the coming into force of Section 4 of the Act. This being so, the High Court in the present case fell in error in setting aside the decision of the executing court and in holding that the right of the appellant to recover possession had come to an end by virtue of the said Act.

6. For the aforesaid reasons, the appeal is allowed and the judgment of the High Court under appeal dated 2nd August, 1988 is set aside, with costs throughout.

7. By order dated 16th September, 1991, the respondent herein was directed to deposit Rs. 10,000/- in the trial court towards annual mesne profits. When this deposit was not made, an application was filed by the appellant for appointment of a Receiver in respect of the suit property. By order dated 8th February, 1993, the appellant himself was appointed as a Receiver and was put in possession but he was required to deposit Rs. 10,000/- per year in the trial court. In view of the fact that the appellant has now succeeded in this appeal, he is entitled to retain the possession of the property as an absolute owner thereof and will be entitled to withdraw from the trial court the amount deposited by him pursuant to the aforesaid order of this Court.

Appeal allowed.

**This judgement ranked 21 in the hitlist.**

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Dewan Chand v. Kuldip Kumar Mehta, (P&H) : Law Finder Doc Id # 128036  
**PUNJAB AND HARYANA HIGH COURT**

Before :- Bakhshish Kaur, J.

Civil Revision No. 1609 of 2001. D/d. 19.9.2001

Dewan Chand - Petitioner

**Versus**

Sh. Kuldip Kumar Mehta - Respondent

For the Petitioner :- Mr. Mohan Sharma, Advocate.

For the Respondent :- None.

**Civil Procedure Code, 1908, Order 21 - Execution of decree - Executing court cannot go behind the decree except when the decree is void *ab initio* or without jurisdiction - The impugned order, therefore, does not suffer from any infirmity - Revision petition dismissed.**

[Paras 7 and 9]

**Cases referred :**

[C. Gangacharan v. C. Narayanan, 2000\(1\) RCR \(C\) 686 \(SC\).](#)

[Chani Singh v. Mohar Singh, 2000\(1\) CCC 651.](#)

#### ORDER

**Bakhshish Kaur, J.** (Oral) - The facts in brief are that Kuldip Kumar Mehta had filed a suit for possession for specific performance of the agreement to sell dated 3.6.1995. It is further prayed that the defendant be directed to execute the sale deed in respect of the property and he be also restrained from transferring, leasing out or alienating the property in any manner to any person other than the plaintiff.

2. The suit was decreed. It was upheld up to this court as Regular Second Appeal No. 1696 of 1999 filed by the defendant, now petitioner, was dismissed *in limine*.

3. For the execution of the decree, the decree holder-respondent (hereinafter referred to as the respondent) had filed an execution application as the judgment-debtor, (hereinafter referred to as the petitioner) had not executed the sale deed in terms of the decree. Thus, the sale deed in favour of the respondent was executed under the orders of the Court. The possession of two shops was delivered on 25.8.1998. The possession of the remaining back portion could not be delivered as it could be delivered only after demolition of the back side wall.

4. During the pendency of the execution proceedings, the petitioner had filed objection petition on the averments that the decree is not executable. In case the wall in question is allowed to be demolished, then the entire building will collapse. The learned Executing Court finding no merit in the objection petition has dismissed it on 7.2.2001 by passing a detailed order which is under challenge in this revision petition.

5. I have heard Mr. Mohan Sharma, learned counsel for the petitioner at the motion hearing.

6. Whether the petitioner can resist the execution of the decree, which has been partly satisfied, by raising a plea that decree is not executable? If at all the property, which is subject-matter of the decree, was inseparable from the other portion of the building, which is in his possession, he could raise these pleas during the trial of the case. The objections so raised appear to have been taken simply to delay the matter and to defeat the right of the decree holder in whose favour the decree was passed long ago. Above all, the Regular Second Appeal filed by the petitioner was also dismissed in 1999. The pendency of review petition, as submitted by the learned counsel, is of no consequence because admittedly the

Court has not issued any stay order restraining the decree holder from proceeding with the execution of the decree.

7. It is well settled that the Executing Court cannot go behind the decree except when the decree is void *ab initio* or without jurisdiction. In this context, reliance can be easily placed on [\*\*\*C. Gangacharan v. C. Narayanan, 2000\(1\) RCR \(C\) 686 \(SC\).\*\*\*](#)

8. In ***Chani Singh v. Mohar Singh & Anr. 2000(1) CCC 651,*** it is observed that where the objections at the face of it are frivolous, *mala fide* and intended to obstruct the process of law, there is no restriction on the powers of the Court to summarily reject such objections. In the given case in hand also frivolous objection has been filed by the frustrated objector with an intent to obstruct and delay the proceedings.

9. Under these circumstances, when the decree has been partly satisfied by delivering the possession of two rooms, the decree holder cannot be deprived of his right to get the possession of the remaining portion of the building. The impugned order, therefore, does not suffer from any infirmity.

10. Resultantly, this revision petition is dismissed.

Petition dismissed.