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S. RAJESWARI

v

S.N. KULASEKARAN AND ORS.

MARCH 29, 2006

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[B.P. SINGH AND ALTAMAS KABIR, JJ.]

Code of Civil Procedure, 1908—Sections 151 and 115—Order XXI Rule 97 –Possession of land claimed pursuant to execution of decree—On C *obstruction to delivery of possession, application filed under Section 151 CPC dismissed as not maintainable after recording of evidence—Against this, revision petition under Section 115 to High Court allowed—On appeal, held: Though application ought to have been filed under Order XXI, Rule 97 instead of Section 151, but as executing court recorded evidence and thereupon adjudicated in the matter, it was in substance treated as under the former* D *provision—But in this view, the order passed in that proceeding must be treated as a decree against which only an appeal lay to appellate court, and revision petition under section 115 was not maintainable.*

Respondent no. 1 claimed possession of impugned land pursuant to execution E **of a decree. Appellant obstructed delivery of possession on ground that the land lawfully belonged to her. On this, respondent no.1 filed a petition under Section 151 CPC before the executing court. The court recorded evidence but ultimately dismissed the petition as not maintainable. It was of the view that the application ought to have been filed under Order XXI Rule 97 CPC. Against this revision petition of respondent no.1 High Court was allowed with directions for removal of** F **appellant from the impugned lands. Hence the present appeal.**

Appellant contended that the application filed under section 151 CPC being not maintainable nothing survived for further consideration.

Allowing the appeal, the Court

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HELD 1. Respondent no.1 ought to have filed an application under Order XXI, Rule 97 of the Code of Civil Procedure. Order XXI, Rule 97 clearly provides that where execution of decree is resisted or obstructed by any person, the decree holder may make an application to the court complaining of such resistance or obstruction, whereupon the court shall proceed to adjudicate upon the application

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in accordance with the provisions contained in the Code. Rules 98 to 100 are the Rules which provide the manner in which such an application has to be dealt with. Under Rule 101, all questions including question relating to right, title and interest of property arising between the parties to the proceeding and relevant to the adjudication of the application, have to be determined by the court dealing with the said application. Rule 103 provides that when an application is adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree. It thus follows that if an application is made under Order XXI, Rule 97, which is adjudicated upon by the court, the adjudicatory order is treated as a decree against which an appeal may be filed. In the instant case, therefore, since the adjudicatory order passed by the executing court went against respondent no.1, he ought to have filed an appeal before the High Court. [614-E-H; 615-A]

2.1. The application filed by respondent no.1 was one under Section 151 CPC and not under Order XXI, Rule 97 CPC. But the executing court in substance treated it as an application under Order XXI, Rule 97 because it proceeded to record evidence and thereupon adjudicated in the matter. In fact, the decree holder was also examined before the executing court. His evidence was also considered by the court in reaching the conclusion that the identity of the plot in question had not been established thereby, disabling the bailiff from executing the decree for possession of the land. [615-B, C]

2.2. If the said application under Section 151, CPC is treated as one under Order XXI, Rule 97 CPC the order passed in that proceeding must be treated as a decree against which only an appeal lay to the appellate court. Respondent no.1 did not appeal to the High Court and instead preferred a revision petition under section 115 CPC. [615-E]

2.3. In view of the provision of Order XXI, Rule 103 CPC, no revision could be entertained by the High Court against that order in view of the clear prohibition contained in section 115(2) of the CPC, which in clear terms provides that the High Court shall not under Section 115 vary or reverse any decree or order against which an appeal lay either to the High Court or to any other Court subordinate thereto. [615-F]

2.4. The High Court appears to have interfered with the order of the executing court because it was under the impression that a long drawn litigation, perhaps engineered by the judgment-debtor, would result in great injustice, and therefore, if some relief could be granted by cutting short the procedure of appeal, etc., the power under Section 115 could be exercised to do justice between the

A **parties. The High Court could not have acted in a manner contrary to the express provision of Section 115(2) of the Code of Civil Procedure. [615-G; 616-A]**

2.5. It must, therefore, be held that the High Court exceeded its jurisdiction in entertaining a revision petition under Section 115, against an order passed in
B **proceeding under Order XXI, Rule 97 CPC, even if the application filed under Section 151 CPC is treated to be an application under Order XXI, Rule 97 CPC. [616-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1417/2001.

C From the Judgment and Order dated 10.8.2000 of the High Court of Madras in C.R.P. No. 140/2000.

WITH

Cont. Pet. (Civil) No. 351/2002 in C.A. No. 1417/2001.

Ajit Kumar Sinha and Ms. S. Janani for the Appellants.

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A.T.M. Rangaramanujam, C. Paramasivam, P. Ramesh, Rakesh K. Sharma, Muthu Durai, G. Sivabalamurugan, Y. Arunagiri, L.K. Pandey and Ajit Kumar Sinha for the Respondent.

The Judgment of the Court was delivered by

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B.P. SINGH, J. This appeal by special leave is directed against the common judgment and order of the High Court of Judicature at Madras dated August 10,2000 in Civil Revision Petition nos. 138-143 of 2000. The appellant before us is one of the persons who obtained by respondent no. 1 herein. In view of the obstruction by the appellant herein, respondent no. 1 filed an
F application before the executing court under Section 151 of the Code of Civil Procedure praying for certain reliefs. The executing court rejected the said application holding it to be not maintainable. The order of the executing Court dated 22.11.1999 was challenged before the High Court in revision petition filed under Section 115 of the Code of Civil Procedure. The said revision petition was allowed by the High Court by its impugned judgment and order.

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We may notice only the facts necessary for the disposal of this appeal. One Mr. Nagoor was the original owner of land measuring 19.57 acres in plot Nos. 54 and 55 bearing survey No. 131/2A and 1A2 in Villivakkan Village, Chennai. The respondent no. 1 herein purchased land measuring 6 cents from
H one Mr. Robert who in turn had acquired the land under a deed of settlement

dated 25.2.1967 from one Mr. John, who had purchased it from Mr. Nagoor on 26.11.1960. The purchase by respondent no.1 was on August 6, 1969. It appears that the said Mr. Nagoor sold lands out of the said plot to others as well, one of them being Pakairaj to whom he sold 6 cents of land on 14.5.1981.

Respondent no. 1 filed suit O.S. No. 1311/81 before the court of District Munsif, Poonamallee for declaration of title and for recovery of possession of 6 cents of land. He also prayed for permanent injunction. Packiraj was the defendant in this suit. It appears that thereafter on 12.10.1985 Mr. Nagoor sold 6 cents to one Mr. Deva Anbu.

The respondent No. 1 sought amendment and claimed declaration of title of 10 cents of land i.e. 4425 sq.ft. and later Mr. Nagoor was also impleaded as a party defendant.

It is not disputed that on 29.12.1998 the suit filed by respondent no. 1 was decreed. A first appeal preferred by Mr. Pakiaraj was also dismissed. The second appeal also came to be dismissed on 22.2.1990.

The appellant before us had also purchased 2970 sq.ft. of land from Deva Anbu by a registered sale deed dated 26.3.1990. Several other applications were made by the decree holder for amendment of the decree incorporating various other specifications. It is not necessary to refer to other proceedings taken. Suffice it to say that by order dated 30th March, 1999 the Trial Court passed an order for delivery of possession of suit land to the respondent no. 1 plaintiff.

The Bailiff along with police, Taluk Surveyor and the decree holder came to execute the decree on 8.4.1999. He found that the property identified by the decree holder was quite different from the land described in the decree and accordingly he made a report to the Court to the effect that since the identity of the land which was subject matter of the decree was in doubt, the warrant could not be executed. The decree holder respondent no. 1 herein also made a similar endorsement. The appellant herein submitted her written objections claiming that the land, of which possession was sought to be given to the decree holder, was the land belonging to her which she had validly acquired under a registered sale deed.

Respondent No. 1 decree holder filed a petition under Section 151, C.P.C before the executing court on 23.4.1999 to remove the obstructor, namely the appellant herein. Though an application was filed under section 151, C.P.C.

A it appears that the court recorded evidence and ultimately came to the conclusion that the application filed by the respondent no. 1 decree holder under Section 151, C.P.C. was not maintainable. According to executing court the decree holder ought to have filed and application under Order XXI, Rule 97 C.P.C. whereafter the procedure prescribed by the following Rules had to be observed and the matter adjudicated. In view of its findings the executing B court on 22.11.1999 dismissed the petition filed under section 151 CPC

Respondent No.1 decree holder preferred revision against the order of the executing court dismissing his application under Section 151, C.P.C. The High Court by its impugned order allowed the said revision petition and C setting aside the order of the executing court directed removal of the obstructor, namely the appellant herein. The said order is challenged before us.

We do not wish to go into the controversy as to whether the identity of the plot of land, subject matter of the decree, was established. There is considerable material on record that creates a lot of confusion about the D identity of the plot of land in question said to have been purchased by respondent no. 1-decree holder. It appears that the lands when originally sold were agricultural lands which had changed their character in due course on account of urbanisation of the area in question. However, what cannot be disputed is the fact that there was obstruction from the appellant herein who obstructed delivery of possession of the land claimed by the decree holder E on the ground that the land belonged to her of which she was the lawful owner having purchased the same from the erstwhile owner by a registered sale deed.

Having heard learned counsel for the parties, we are satisfied that in a F case of this nature, the respondent no.1 ought to have filed an application under Order XXI, Rule 97 of the Code of Civil Procedure. Order XXI, Rule 97 clearly provides that where execution of decree is resisted or obstructed by any person, the decree holder may make an application to the court complaining of such resistance or obstruction, whereupon the court shall proceed to adjudicate upon the application in accordance with provisions contained in G the Code. Rules 98 to 100 are the Rules which provide the manner in which such an application has to be dealt with. Under Rule 101, all questions including question relating to right, title and interest of property arising between the parties to the proceeding and relevant to the adjudication of the application, have to be determined by the court dealing with the said H application. Rule 103 provides that when an application is adjudicated upon under Rule 98 or Rule 100, the order made thereon shall have the same force

and be subject to same conditions as to an appeal or otherwise as if it were a decree. It thus follows that if an application is made under order XXI, Rule 97, which is adjudicated upon by the court, the adjudicatory order is treated as a decree against which an appeal may be filed. In the instant case, therefore, since the adjudicatory order passed by the executing court went against respondent no. 1, he ought to have filed an appeal before the High Court.

We may, however, notice that the application filed by the respondent no. 1 was one under Section 151, C.P.C. and not under Order XXI, Rule 97, C.P.C. But we further notice that the executing court in substance treated it as an application under Order XXI, Rule 97 because it proceeded to record evidence and thereupon adjudicated in the matter. In fact the decree holder was also examined before the executing court. His evidence was also considered by the court in reaching the conclusion that the identity of the plot in question had not been established thereby, disabling the bailiff from executing the decree for possession of the land.

Learned senior counsel for the appellant-obstructor submitted before us that the application filed under section 151, C.P.C. being not maintainable nothing survived for further consideration. Having regard to the fact that the executing court substantially followed the procedure laid down by Rules 98 to 100 and thereafter passed an adjudicatory order, we may hold in favour of the respondent no. 1 to the extent that the application though filed with the label of section 151, C.P.C. was in fact treated as one under Order XXI, Rule 97. This, however, does not resolve the controversy before us because even if we treat the said application under section 151, C.P.C. as one under Order XXI, Rule 97, C.P.C. the order passed in that proceeding must be treated as a decree against which only an appeal lay to the appellate court. The respondent no.1 did not appeal to the High Court and instead preferred a revision petition under section 115, C.P.C. We have no doubt that in view of the provisions of Order XXI, Rule 103, C.P.C. which provide for appeal against the order passed by the executing court in such matters, no revision could be entertained by the High Court against that order in view of the clear prohibition contained in section 115(2) of the C.P.C. which in clear terms provides that the High Court shall not under Section 115 vary or reverse any decree or order against which an appeal lay either to the High Court or to any other Court subordinate thereto. The High Court appears to have interfered with the order of the executing court because it was under the impression that a long drawn litigation, perhaps engineered by the judgment-debtor would result in great injustice, and therefore, if some relief could be granted by cutting short the

A procedure of appeal etc., the power under section 115 could be exercised to do justice between the parties. In our view the High Court could not have acted in a manner contrary to the express provision of section 115(2) of the Code of Civil procedure. Since an appeal was provided under Order XXI, Rule 103 of the Code of Civil Procedure which treated the order passed by the executing Court as a decree subject to the same conditions as to appeal against such decree, a revision petition under section 115, C.P.C. against such an order is not maintainable. We must, therefore, hold that the High Court exceeded its jurisdiction in entertaining a revision petition under section 115, C.P.C. against an order passed in proceeding under Order XXI, Rule 97, C.P.C., even if we treat the application filed under Section 151, C.P.C. to be an application under Order XXI, Rule 97, C.P.C.

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The order of the High Court cannot be sustained and accordingly this appeal is allowed and the impugned judgment and order is set aside.

Learned senior counsel appearing on behalf of respondent no. 1 submitted that the respondent no.1 was ill advised to prefer a revision petition before the High Court instead of an appeal. He submitted that it is still open to the respondent no.1 to move the High Court by way of an appeal. We express no opinion in the matter and we leave it to parties to seek such remedy as may be available to them in accordance with law. This appeal is accordingly allowed.

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V.S. Appeal allowed.