WP-1469-2013

(MAHARAJDEEN Vs ***PRESIDENT SHRI RAMKRISHAN ASHRAM AND 3 ORS.)***

20-06-2017

Parties through their counsel.

Petitioners before this Court, who are legal heirs of the deceased Maharajdeen, are aggrieved by the order dated 09.01.2013 (annexure P-16) passed by the learned 4th Civil Judge, Class-I, Indore in Execution Case No.120-A/03/2009.

Facts as stated by the petitioner in the writ petition reveals that respondent Nos.1, 2 and 3 (Ramkrishan Mission), who are the decree holders have filed a civil suit in respect of the land bearing survey No.29 and the civil suit was filed only for possession. The petitioner's contention is that an order was passed during the pendency of the civil suit for proceeding ex-parte against the defendants and thereafter, the boundaries of the survey No.29 were amended by filing an amendment application and no notice was issued to the defendants in respect of the amendment application. It has also been stated that an ex-parte judgment and decree was passed on 12.09.2003.

The petitioners have further stated that an application was preferred under Order 9 Rule 13 of CPC for setting aside the ex-parte judgment and decree and the same was dismissed on 04.08.2008 and thereafter, an execution application was

preferred by the plaintiffs and in the execution application the petitioner has filed an application under Order 26 Rule 9 of CPC for spot inspection and another application under Order 13 Rule 10 of CPC for taking documents of the civil suit on record, for calling the original record and an application under Section 151 of CPC for recording of the evidence r/w application under Order 21 Rule 35 of CPC.

One more application under Section 47 was also preferred by the present petitioner and the same has also been dismissed by the trial court. In the application preferred under Section 47, a prayer has been made that the land is in the possession of the petitioners and houses are not situated over survey No.29, however, the application has been dismissed.

Learned counsel for the petitioner has vehemently argued that the houses are not situated over the survey No.29 at all and therefore, in all fairness, the application under Section 47 should have been allowed.

Learned counsel has placed reliance upon a decision delivered by the Nagpur High Court in the case of Ganesh Prasad Ramprasad Vs. Damayanti, AIR (33) 1946 Nagpur, 60, wherein it has been held that amendment would not be allowed without fresh notice to the defendant.

Reliance has also been placed upon another judgment delivered in the case of **Mahesh Singh Vs.**

Sewaram, reported in 2000(1) JLJ, 373. Again it has been argued that amendment could not have been allowed without issuing fresh notice to the defendants. It has also been argued by the learned counsel that the impugned order is illegal, arbitrary, unjust and without jurisdiction and it is resulting failure of justice.

A ground has further been taken that the respondent Nos.1, 2 and 3 (Ramkrishan Mission) want to dispossess the petitioners under the garb of fraudulent and ex-parte decree and judgment from the land, which is not a part of survey No.29. It has also been stated that as there is no dispute in respect of demarcation of the boundaries/area and as the civil suit has not been decided bi-party, the impugned order deserves to be set aside. It has also been stated that the executing court has erred in law and facts in rejecting the application preferred under Section 47 without adjudicating it in a mechanical manner. It has also been state that the decree was in respect of survey No.29 and the executing court cannot travel beyond the decree and judgment passed by the trial court.

Learned counsel for the respondent Nos.1, 2 and 3 (Ramkrishan Mission) has argued before this Court that the civil suit was filed in the year 1978 and it was in respect of Survey No.29. Written statement was filed by the defendants and in paragraph No.4

and 8 of the written statement, the objections, which have now been taken in respect of the land in question were taken by the defendants and later on, the defendants opted not to appear before the trial court and in those circumstances, ex-parte judgment and decree was passed on 12.09.2003 after a lapse of 25 years.

It has also been stated that thereafter, an application was preferred under Order 9 Rule 13 of CPC and the same was dismissed on 04.08.2008 and a revision was preferred against the aforesaid order dated 04.08.2008, which was also dismissed on 20.10.2008 and thereafter, an application for execution of judgment and decree in civil suit was preferred on 24.01.2009.

Learned counsel for the respondents has argued before this Court that the present petitioners have also filed a civil suit i.e. Civil Suit No.12A/08 and the same averments, which have been made in the present petition about survey No.29 were in existence in the aforesaid civil suit and the civil suit was dismissed on 29.01.2009 and thereafter, another civil suit was preferred by Surekaha, wife of the petitioner No.3- Mahesh i.e. Civil Suit No.49A/2009 seeking declaration, possession and injunction and the same was dismissed on 19.02.2010.

It has been further stated that the judgment and decree passed by the trial court, nor the order passed

on the application for setting aside the ex-parte decree have been set aside, therefore, no case for interference is made out in the matter. It has been further stated that in the present petition the factum of filing of the civil suit has been suppressed and therefore, the petition deserves to be dismissed. He has not only prayed for dismissal of the writ petition but has also prayed that heavy cost may be imposed in the matter.

Heard the learned counsel for the parties at length and perused the record.

In the present case, facts reveal that respondent Nos.1, 2 and 3 (Ramkrishan Mission) have filed a civil suit way back in the year 1978 in respect of land in question i.e. land bearing survey No.29 situated in the village-Sulkhakedhi, Tehsil and District- Indore. Documents on record further reveals that a lease deed was executed by the State of M.P. in favour of the decree holders/respondent Nos.1, 2 and 3; and the land admeasuring 2.81 acres was leased out by the State Government bearing survey No.26, 27, 28 and 29 situated at village- Sulkakhedi, Tehsil and District-Indore. There is no document on record in respect of survey No.26, 27, 28 and 29 in respect of title in favour of the present petitioners and as the petitioners/defendants/judgment debtors were encroachers upon survey No.29, a civil suit was preferred claiming possession in respect of the land

over which the petitioners/defendants/judgment debtors were in possession.

The civil suit was filed on 28.03.1978 and written statement was filed on 28.07.1979 and the objection, which is being raised before this Court was raised in paragraph Nos.4 and 8 and it was stated by the defendants that they are in possession of the suit land. Nothing prevented the defendants to take a plea that the land over which they are in possession is a part of survey No.71 and 72.

After filing of the written statement, the defendants opted not to appear before the trail court and ex-parte judgment and decree was passed on 12.09.2003, meaning thereby, after a lapse of about 25 years and the application filed under Order 9 Rule 13 of the CPC for setting aside the ex-parte judgment dated 12.09.2003 was dismissed by the trial court on 04.08.2008 thereafter, civil revision was preferred before this Court and this Court has passed a detailed order while dismissing the civil revision i.e. C.R. No.243/2008 on 20.10.2008. The order passed in C.R. No.243/2008 reads as under:-

> â□□**Civil Revision No.243/2008**
>
> **20.10.2008**
>
> Shri RK Bhadang, learned counsel for the applicant.
>
> He is heard on the question of admission.
>
> **O R D E R**
>
> This revision is directed against the order dated 04.08.2008 passed by the 10th Additional

District Judge, Indore in Misc. Civil Appeal No.2/08. Said appeal was preferred by the applicant against the order of the Trial Court whereby application under Order 9mrule 13 of the C.P.C. and application under Section 5 of the Limitation were rejected and Trial Court refused to set aside ex-parte judgment and decree passed against the applicant.

2. Non-applicants herein filed a suit on 26.08.78. From the impugned order it is clear that applicant was given as many as 9 opportunities on various dates and ultimately by order dated 10.08.2000 the trial court proceed ex-parte against the applicant. An ex-parte decree was passed on 12.09.03. Applicant filed application under Order 9 Rule 13 along with an application under Section 5 of the Limitation Act on 17.1.07. It was alleged that applicant acquired knowledge of ex-parte judgment and decree on 22.12.2006 when copy of the ex-parte judgment and decree was produced in some other civil suit. It was also alleged that applicant is suffering from arthritis due to old age. It was also alleged that his wife has expired and he was depending upon his advocate in the conduct of the suit. Since, advocate did not inform him, therefore, applicant has suffered ex-parte judgment and decree. Thus, according to the applicant he had good and sufficient cause for his non-appearance before the trial court as well as for condonation of delay. It was also alleged that before ex-parte judgment and decree was passed, no intimation was given to the applicant regarding application filed by the non-applicants under order 6 Rule 17. It was also alleged that for the mistake of the counsel, applicant should not be made to suffer.

3. Application was opposed by the non-applicant and the trial court after considering material available on record, found that no good and sufficient cause was made out and accordingly dismissed the application under Order 9 Rule

> 13 as well as application under Section 5 of the Limitation Act. Against the order passed by the trial court, application preferred an Misc. Appeal which too was dismissed by the order impugned.
> 4. Learned counsel for the applicant reiterated the submissions which were urged before the courts below and after hearing learned counsel for applicant in the considered opinion of this Court, the order impugned does not suffer from any jurisdictional error so as to warrant interference under Section 115 of the C.P.C. It is clear from the impugned order that sufficient opportunity was given to the applicant but he had failed to avail of them as a result Court proceed ex-parte against him and passed judgment and decree on 12.09.03. Even after passing the decree, applicant woke up and filed application after four years in the year 2007. Thus, it is clear that applicant was not vigilant and law will not come to the rescue of a person who does not pursue the case with due diligent.
> 5. Thus, we find no merit and substance in the revision. Same stands dismissed summarily.â□□

The respondent Nos.1, 2 and 3 (Ramkrishan Mission) have, thereafter, preferred an application for execution and the impugned order has been passed in the execution case.

Another aspect of the case is that no appeal against the ex-parte judgment and decree was preferred by the petitioners/defendants, on the contrary, they filed a civil suit i.e. Civil Suit No.12-A/08 claiming possession and injunction in respect of the land over which they were in possession and the civil suit was dismissed on 29.01.2009. Again for the reasons best

known to the petitioners, the judgment and decree dated 29.01.2009 has not been challenged nor it has been set aside nor any proceeding has been initiated before any court.

The present petitioner was the plaintiff in the aforesaid suit and thereafter, the second civil suit was filed by one Surekha, who was wife of Mahesh Yadav 'petitioner No.-3', who is son of the judgment debtor, Maharajdin i.e. civil suit No.49A/09 and the same has been disposed of on 19.09.2010. Again, the order dated 19.09.2010 has not been challenged before any forum and the plea taken in both the civil suits were same, meaning thereby, the claim was not allowed.

In the execution case, the impugned order has been passed on 19.01.2013 directing the issuance of possession warrant.

This Court has carefully gone through the judgment delivered by the Nagpur High Court in the case of Ganesh Prasad Ramprasad (supra). It was a plaint seeking divorce and certain new allegations were made after the defendants were proceeded ex-parte in the application under Order 6 Rule 17 of the C.P.C. whereas in the present case, after filing of the civil suit, the written statement was filed and the judgment and decree has been delivered in respect of survey No.29. The judgment relied upon by the learned senior counsel is of no help.

This Court has carefully gone through the judgment delivered in the Mahesh Singh (supra) and in the aforesaid case, again an ex-parte order was passed proceeding ex-parte and again amendment was sought for change of cause of action .

In the present case, amendment application has been filed not for change of cause of action and the plaintiffs are claiming possession over survey No.29 only and judgment and decree has been passed in respect of survey No.29 only. Hence, the judgment relied upon is again of no help.

So far as first application is concerned, same has been rejected by the executing court i.e. application under Order 26 Rule 9 of CPC. Undisputed fact is that there is a demarcation report of Tehsildar dated 24.03.1997 and the Tehsildar has held that the petitioner is encroacher and nothing prevented the petitioner to file an appeal against the judgment and decree, however, for the reasons best known to them they have not filed any appeal.

In the considered opinion of this Court, trial court has taken care of the spot inspection report and the order passed by the executing court rejecting the application under Order 26 Rule 9 of the CPC does not warrant any interference. In respect of application, which was preferred under Order 13 Rule 10 of CPC for requisitioned the record of the trial court has rightly been rejected by the executing

court. It appears that present petitioners want to delay the execution of the judgment and decree on some pretext or others. Trial court was justified in rejecting the application preferred by the present petitioners. There was an again application under order 151 of CPC for recording the evidence. This Court has carefully gone through the judgment and decree and the decree has been passed in respect of survey No.29 only. In the considered opinion of this Court, the application under Order 151 CPC has rightly been rejected. Another application under Order 21 Rule 29 of CPC for staying the execution was also filed and the trial court has rightly rejected the aforesaid application.

In the considered opinion of this Court, the petitioners/judgment debtors, who have not succeeded in the matter have made all possible attempts to delay the execution proceedings and the executing court was justified in rejecting the application under Order 21 Rule 29 of CPC and the application preferred under Order 47 has also been rejected.

Trial court after considering the documents on record has considered the judgment and decree specially in light of the fact that the decree is confined to only survey No.29 and has rightly rejected the frivolous objection raised by the present petitioners/judgment debtors.

A specific question was raised by this Court towards the learned counsel for the petitioners/judgment debtors i.e. whether the petitioners are having any title documents in their favour and the same has been answered as â□□there is no title document in favour the judgment debtorsâ□□, meaning thereby, the land belonging to the State Government was allotted to the respondent Nos.1, 2 and 3 and they are litigating since then to remove the encroachers out.

Present case reflects a very sorry state of affairs wherin the lawful title holders are being deprived of legitimate right of property on some pretext or other by the petitioners after being unsuccessful in the civil suits. In both the civil suits, the petitioners were unsuccessful and now an attempt is being made to frustrate the judgment and decree. In the considered opinion of this Court, the impugned order passed by the trial court does not warrant interference as the scope of interference by this Court in a writ petition preferred under Article 227 of the Constitution of India is very limited.

The apex court in the case of **Shalini Shyam Shetty Vs. Rajendra Shankar Patil** reported in **2010 (8) SCC 329** in paragraph 49 held as under:-

> "49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:
>
> (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.
>
> (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of

Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of

public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

Resultantly, this Court does not find any reason to interfere with the impugned order passed by the trial court and the same does not suffer from any illegality, perversity or jurisdictional error.

The present petition has been filed against Shri Ramkrishan Ashram, which is an Ashram established by the Ramkrishan Mission and also against its president and secretary. In the present case, land was allotted by the State of Madhya Pradesh to Ramkrishan Mission and over survey No.29, there was some encroachment. A civil suit was filed on 28.03.1978 only for possession. A written statement was filed on 28.07.1979 and the judgment and decree was passed on 12.09.2003, meaning thereby, after a lapse of 25 years.

We are now in the year 2017 and till date, the execution of the judgment and decree has not been done. As argued by the learned counsel for the respondents, the petitioners have filed a case against Ramkrishan Misssion and its office bearers, who are law abiding religious people and they do not know any other mean to get possession except to take shelter of the judicial system of the country.

The Hon'ble Supreme Court in the case of Gaya

Prasad Vs. Pradeep Shrivastava reported in 2001 (2) SCC, 604 in paragraph No.15 has held as under:-

> â□□15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the lis to creep through the line for long long years from the start to the ultimate termini, is a malady afflicting the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject-matter of the lis. If the cause of action is to be submerged in such subsequent events on account of malady of the system it shatters the confidence of the litigant despite the impairment already caused.â□□

The Hon'ble the Supreme Court has dealt with the delay in conclusion of the litigation and has observed that it shatters the confidence of the litigant.

In the present case, the respondents have shown their full confidence in the judicial system as they are religious, law abiding and God fear people and even after expiry of 37 years from the date of taking shelter of the court and after obtaining a decree in their favour, they are not in possession of the land allotted by the Government.

The Apex Court in the case of Shakuntala Bai Vs. Narayan Das, reported in 2004(5) SCC, 772 was dealing with the case wherein the suit for eviction of tenant was instituted more than 42 years back and the proceedings went before the Hon'ble Supreme Court. Paragraph No.1 of the aforesaid judgment

reads as under:-

> â□□1. It is a shocking case. A suit for eviction of a tenant was instituted more than 42 years back in March 1962 for the bona fide need of carrying on business by the owner landlord but his widow and sons are still knocking the doors of the court of justice. During the pendency of the appeal filed by the tenant the landlord died leaving a widow and minor sons but this, the High Court thought, came to the advantage of the tenant, rendering the suit liable for dismissal,little realising that they also needed some place to carry on business for survival. Such extreme views erode the faith of people in the judicial system prompting them to take recourse to extra-judicial methods to recover possession of their property.â□□

In light of the aforesaid judgment, present case is also a one case which may erode the faith of people in the judicial system prompting them to take recourse to extra-judicial methods to recover possession of their property. Even after expiry of 37 years from the date of filing of a suit, the respondents (Ramkrishan Mission) and its office bearers are not in possession of the property.

Resultantly, the writ petition is dismissed with a cost of Rs.50,000/- to be paid within 30 days and the executing court is also directed to conclude the execution proceedings within 30 days from today. The trial court shall also recover the cost and pay the same to respondents.

(S.C.SHARMA)
JUDGE