

SH. MULK RAJ
v.
SH. SUNDER DAS AND ORS.

JANUARY 11, 1996

[K. RAMASWAMY AND G.B. PATTANAIAK, JJ.]

Code of Civil Procedure, 1908 :

Order 21 Rule 32(2)—Mandatory injunction granted by Civil Court in execution—Enforcement of—Held : Since subsequently final decree dividing the properties has been passed, parties bound by the same—Any other proceeding in respect of lands covered by the final decree would stand closed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3045-46 of 1983.

From the Judgment and Order dated 9.12.80 of the Delhi High Court in C.M. No. 3431 of 1980.

Shiva Pujan Singh for the Appellant.

G.L. Sanghi, Rajinder Sachher and R.C. Pathak for the Respondents.

The following Order of the Court was delivered :

These appeals arise from the order of the High Court of Delhi dated December 9, 1980 made in Civil Revision No. 923/80. The facts not in dispute are that the appellant was inducted into possession of the properties, plots bearing Nos. 32, 33 & 35 admeasuring 384 sq. yards situated in Wazir Pur, Kotla Mubarakpur, New Delhi by Smt. Vimla Devi, the 3rd respondent. He had filed a civil suit for injunction against the respondent. Ultimately, the decree of the trial court granting injunction became final. In the meanwhile, the appellant as well as respondent Nos. 1 & 2 each have purchased 1/3 share of the property. Consequently, suit No. 27/73 was filed for partition and separate possession thereof. Preliminary decree was granted on September 24, 1974 & final decree thereof was passed on May 22, 1980. Thus the rights of the parties stood worked out namely the appellant & respondent Nos. 1 and 2 are entitled to 1/3rd share each in the total extent of the land as per the final decree granted by the civil court.

A In view of these facts, it is stated by Shri Rajindra Sachher and Shri G.L. Sanghi, learned senior counsel, that the appeals have become infructuous.

B It may be mentioned at this stage that this appeal arises against a proceeding initiated under Order 21 Rule 32(2) of CPC for enforcement of the mandatory injunction granted by the civil court in execution. The trial Court granted execution to consign the respondents No. 1 and 2 to civil prison and mandatory injunction for removal of the respondents' possession of the entire property with police assistance. The appeal was dismissed. While dismissing the revision under Section 115 CPC as being barred by limitation, the High Court *suo motu* exercised its power under Article 227 of the Constitution and set aside the order of the execution court. Feeling aggrieved against that order, this appeal has been filed.

C In view of the fact that the parties have accepted the final decree dividing the properties into 1/3rd share each and allowing that final decree to become final, the parties are bound by the decree and the appellant is entitled to 1/3rd share for possession. Any other proceedings in respect of lands covered by the final decree in suit No. 27/73 would stand closed and all the parties are to enforce their right under the final decree only.

D These appeals are accordingly disposed of with the above directions.

E G.N. Appeal disposed of.