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arriving at the net market value and if evidence is produced in that behalf on its basis applying the suitable 10 years' multiplier, the market value need to be determined. The owner or claimant should not be put to loss by undervaluation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory duty of the court to maintain the balance between diverse interests.

7. Claimant stands in the position of plaintiff and the onus is on him to adduce necessary and relevant evidence in proof of the objection for higher compensation. The court is also enjoined to carefully scrutinise and analyse the evidence and applying the acid test of a prudent purchaser and a willing vendor or the realised income on the crops, the true, correct and fair market value should be arrived at. The reference court has absolutely failed to apply these tests in determining the compensation. Rejecting the evidence relied on by the claimants under Exs. A-1 to A-6, there is no other evidence to enhance the compensation. The doctrine of reinstatement value cannot be applied in determining the market value under Section 23(1) of the Act. The reason is obvious. There will always be a gap between the date of the notification and the date of payment. To recompensate the loss, payment of interest under Section 28, solatium under Section 23(2) and appropriate cases after the Amendment Act 68 of 1984 has come into force, 12% per annum of the additional amount under Section 23(1-A) are provided for. It would, therefore, be illogical and unrealistic to apply the doctrine of reinstatement value in determination of the compensation under Section 23(1).

8. In this view, though the High Court has applied wrong principle but the conclusion reached by the High Court in determining the compensation at Rs 12,000 per acre cannot be said to be illegal warranting interference. Before parting with the case, we express hope that the State Government should settle all the claims in a Lok Adalat as was done in respect of acquisition of lands for Srisaigram Project and Vishakhapatnam Steel Project. The appeals are accordingly dismissed. No costs.

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(BEFORE K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.)

B. GANGADHAR

.. Petitioner;

Versus

B.G. RAJALINGAM

.. Respondent.

SLP (C) No. 10546 of 1995[†], decided on May 12, 1995

Civil Procedure Code, 1908 — Or. 21, Rr. 35(3), 98 & 101 and Or. 1 R. 3 — Decree for possession of immovable property — Tenants in — Powers and jurisdiction of the executing court — Trial court declaring the decree-holder to

[†] From the Judgment and Order dated 17-2-1995 of the Andhra Pradesh High Court in C.R.P. No. 496 of 1994

a be absolute owner of the suit property and directing the judgment-debtor and his tenants to hand over vacant possession to the former — Decree becoming final but the judgment-debtor, without permission from the court, having constructed shops on the suit property and inducted tenants into possession pendente lite — In such circumstances, even in absence of a mandatory injunction in the decree, held, the executing court could direct the demolition of the said shops — Further, the tenants in possession, although not eo nomine parties to the decree, held bound by the said decree

b The trial court declared the respondent to be the absolute owner of the suit property and also directed the petitioner “his men, tenants to vacate and hand over vacant possession of the land held by the petitioner”. The decree had become final. However, the petitioner had meanwhile, without the court’s permission, constructed shops and inducted tenants into possession. One of the questions before the Supreme Court was whether on the petitioner’s application under Order 21, Rule 98 and Section 151 of CPC, the executing court could direct demolition of the shops. The second question was whether the tenants in possession, being not eo nomine parties to the decree were not bound by the decree of the trial court and that, therefore, the direction to dispossess them was illegal. Answering the first question in the affirmative and the second one in the negative and dismissing the petitioner’s SLP, the Supreme Court

c Held :

d The right to ownership of a property carries with it the right to its enjoyment, right to its access and of other beneficial enjoyment incidental thereto. If any obstruction or hindrance is caused in its enjoyment or use, the owner, of necessity, has the remedy to have it removed. If any obstruction is raised by putting up a construction pendente lite or prevents the passage or right to access to the property pendente lite, the plaintiff has been given right and the decree-holder is empowered to have it removed in execution without tortuous remedy of separate suit seeking mandatory injunction or for possession so as to avoid delay in execution or frustration and thereby defeat the decree. The executing court, therefore, would be justified to order removal of the unlawful or illegal construction made pendente lite so that the decree for possession or eviction, as the case may be, be effectually and completely executed and the delivery of possession is given to the decree-holder expeditiously. Admittedly, pending suit the petitioner had constructed shops and inducted tenants in possession without permission of the court. The only course would be to decide the dispute in the execution proceedings and not by a separate suit. No doubt, the decree does not contain a mandatory injunction for demolition.

e But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. (Paras 6 and 8)

f It is also not necessary that the tenants should be made party to the suit when the construction was made pending suit and the tenants were inducted into possession without leave of the court. It is settled law that a tenant who claims title, right or interest in the property through the judgment-debtor or under the colour of interest through him, he is bound by the decree and that, therefore, the tenant need not eo nomine be impleaded as a party defendant to the suit nor can it be an impediment to remove obstruction put up by them to deliver possession to the decree. (Para 9)

g *Halsbury’s Laws of England*, IVth Edn., Vol. 35, paras 1214, 1211 and 1216 and *Black’s Law Dictionary*, VIth Edn., referred to

h SLP dismissed

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Advocates who appeared in this case :

Subodh Markandeya and Ms Chitra Markandeya, Advocates, for the Petitioner.

ORDER

1. This petition arises from the order of the Andhra Pradesh High Court dated 17-2-1995 made in CRP No. 496 of 1994.

2. The petitioner is the judgment-debtor. The respondent laid OS No. 375 of 1985 for declaration of title to and for possession of the property bearing No. 21-6-652 situated at Chelapura, Hyderabad. By decree dated 25-1-1991 the trial court declared him to be the absolute owner of the suit property and also directed the petitioner "his men, tenants to vacate and hand over vacant possession of the land held by the petitioner". The decree had become final. When warrant was issued in execution for delivery of possession, the bailiff returned it on the ground that the petitioner had constructed shops and inducted tenants into possession and that, therefore, he cannot execute the warrant. Thereon, the respondent filed an application under Order 21, Rule 98 read with Section 151 CPC to issue warrant to the bailiff to demolish the shops constructed by the petitioner and deliver vacant possession of the suit house. The executing court, after enquiry, by its order dated 30-9-1993 directed bailiff by warrant to demolish the shops and to deliver vacant possession to the respondent. The petitioner carried the order in revision but was unsuccessful. Thus this SLP.

3. Two principal contentions raised all through are that in the absence of mandatory injunction granted in the decree, the executing court is devoid of power and jurisdiction to direct demolition of the shops constructed by the petitioner. The second contention is that the tenants in possession being not eo nomine parties to the decree, are not bound by the decree of the trial court and, therefore, the direction to dispossess them is illegal. The courts below have rightly rejected both the contentions.

4. Order 21 Rule 101 provides that :

"All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

5. The executing court, therefore, is mandated to decide all questions relating to right, title or interest in the property in the execution proceedings and not by way of a separate suit, notwithstanding anything contained contrary in any other law for the time being in force. Halsbury's Laws of England, IVth Edn., Vol. 35 in para 1214 at p. 735, the word 'possession' is used in various contexts and phrases, for example, in the phrase "actual possession" or "to take possession" or "interest in possession" or "estate in possession" or "entitled in possession". In para 1211 at p. 732, legal

- possession has been stated that possession may mean that possession which is recognised and protected as such by law. Legal possession is ordinarily associated with de facto possession; but legal possession may exist without de facto possession, and de facto possession is not always regarded as possession in law. A person who, although having no de facto possession, is deemed to have possession in law is sometimes said to have constructive possession. In para 1216 at p. 736 it is stated that the right to have legal and de facto possession is a normal but not necessary incident of ownership. Such a right may exist with, or apart from, de facto or legal possession, and different persons at the same time in virtue of different proprietary rights.

6. In *Black's Law Dictionary*, 6th Edn., the ownership has been defined as "Collection of rights to use and enjoy property, including right to transmit it to others". Therefore, ownership is de jure recognition of a claim to certain property. Possession is the objective realisation of ownership. It is the de facto exercise of a claim to certain property and a de facto counterpart of ownership. Possession of a right is the de facto relation of continuing exercise and enjoyment as opposed to the de jure relation of ownership. Possession is the de facto exercise of a claim to certain property. It is the external form in which claims normally manifest themselves.
- Possession is in fact what ownership is in right enforceable at law to or over the thing. A man's property is that which is his own to do what he likes with it. Those things are a man's property which are the object of ownership on his part. Ownership chiefly imports the right of exclusive possession and enjoyment of the thing owned. The owner in possession of the thing has the right to exclude all others from the possession and enjoyment of it. If he is wrongfully deprived of what he owns, the owner has a right to recover possession of it from the person who wrongfully gets into possession of it. The right to maintain or recover possession of a thing as against all others is an essential part of ownership. Ownership implies not so much the physical relation between the person and the thing as the relation between the person owning and the thing owned. Ownership is pre-eminently a right. The right to ownership of a property carries with it the right to its enjoyment, right to its access and of other beneficial enjoyment incidental thereto. If any obstruction or hindrance is caused for its enjoyment or use, the owner, of necessity, has the remedy to have it removed. If any obstruction is raised by putting up a construction pendente lite or prevents the passage or right to access to the property pendente lite, the plaintiff has been given right and the decree-holder is empowered to have it removed in execution without tortuous remedy of separate suit seeking mandatory injunction or for possession so as to avoid delay in execution or frustration and thereby defeat the decree. The executing court, therefore, would be justified to order its removal of unlawful or illegal construction made pendente lite so that the decree for possession or eviction, as the case may be, effectually and completely executed and the delivery of possession is given to the decree-holder expeditiously. Admittedly, pending suit the petitioner had constructed

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shops and inducted tenants in possession without permission of the court. The only course would be to decide the dispute in the execution proceedings and not by a separate suit.

7. Order 21, Rule 35(3) envisages that:

“Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.”

8. Rule 35(3) of Order 21 itself manifests that when a decree for possession of immovable property was granted and delivery of possession was directed to be done, the court executing the decree is entitled to pass such orders incidental, ancillary or necessary orders for effective enforcement of the decree for possession. That power also includes the power to remove any obstruction or superstructure made pendente lite. The exercise of incidental, ancillary or inherent power is consequential to deliver possession of the property in execution of the decree. No doubt, the decree does not contain a mandatory injunction for demolition. But when the decree for possession had become final and the judgment-debtor or a person interested or claiming right through the judgment-debtor has taken law in his hands and made any constructions on the property pending suit, the decree-holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the court. Otherwise, the decree becomes inexecutable driving the plaintiff again for another round of litigation which the code expressly prohibits such multiplicity of proceedings.

9. It is also not necessary that the tenant should be made party to the suit when the construction was made pending suit and the tenants were inducted into possession without leave of the court. It is settled law that a tenant who claims title, right or interest in the property through the judgment-debtor or under the colour of interest through him, he is bound by the decree and that, therefore, the tenant need not eo nomine be impleaded as a party defendant to the suit nor can it be an impediment to remove obstruction put up by them to deliver possession to the decree. What is relevant is only a warning by the bailiff to deliver peaceful possession and if they cause obstruction, the bailiff is entitled to remove the obstruction; cause the construction demolished and deliver vacant possession to the decree-holder in terms of the decrees. Thus considered, we hold that the High Court and the executing court have not committed any error of law in directing demolition of shops and delivery of the possession to the decree-holder.

10. The SLP is accordingly dismissed.