

DR. GHANSHYAM JAISWAL

v.

KAMAL SINGH

FEBRUARY 16, 1996

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

Code of Civil Procedure, 1908 :

Sections 11, 47—Suit for ejection—Compromise entered into— Decree for eviction after recording compromise and evidence—Possession not delivered—Execution petition for possession—Objected to on the ground that the decree was vague and incapable of being executed—Held, party precluded by constructive res judicata to raise plea regarding executability of the decree—Liberty given to have the decree executed with the assistance of the Police.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3795 of 1996.

From the Judgment and Order dated 21.6.95 of the Madhya Pradesh High Court in C.R. No. 1252 of 1994.

A.K. Chitale and Niraj Sharma for the Appellant.

The following Order of the Court was delivered :

Leave granted.

Though the respondent has been served by dasti, he is not appearing either in person or through counsel. The facts are eloquent. In a suit for ejectment filed on April 5, 1984, the respondent had entered into a compromise on foot of which the decree for eviction was granted after recording the compromise and evidence. The respondent did not deliver the possession of the demised property in terms of the compromise decree. Therefore, the appellant was constrained to lay execution for possession of the property. In the first round of litigation, the respondent had challenged under section 47 of the C.P.C. impugning the validity of the compromise decree which was turned down by the executing Court. The High Court dismissed W.P. No. 2849 of 1994 by order dated August 19, 1994. Against

- A the respondent laid another objection under Section 47 contending that the decree is vague and incapable of being executed. That was turned down by the executing Court on September 30, 1994. Against that, the respondent filed a revision in the High Court. The High Court in the impugned order allowed the revision by order dated June 21, 1995 in C.R. No. 1252/94 since the counsel for the appellant had reported no instructions.

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The only question is : whether the respondent is entitled to raise the plea of vagueness? Having entered into the compromise and suffered a decree on foot of compromise and also having raised the plea of non-executability of the compromise decree and having become unsuccessful, he is precluded by constructive *res judicata*, of might and ought in Explanation VI to Section 11, to raise any other plea of the executability of the decree. The High Court, therefore, was clearly in error in allowing the revision and setting aside the Execution application.

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- D The appeal is accordingly allowed. The order of the High Court is set aside. The appellant is at liberty to have the decree executed with the assistance of the police. No costs.

G.N.

Appeal allowed.