

CASE NO.:
Appeal (civil) 6708 of 2001

PETITIONER:
SARASWATI DEVI GUPTA

RESPONDENT:
SUDHA RANI & ORS.

DATE OF JUDGMENT: 14/12/2005

BENCH:
B.P.SINGH & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T

B.P.SINGH, J.

This Appeal by Special Leave is directed against the Order of the High Court of Judicature at Allahabad in Review Petition No.64773 of 1996 dated 22.7.1999 whereby the High Court summarily dismissed the Review Petition preferred by the appellant herein. By its Order dated August 30, 1996 the High Court had directed the Executing Court to entertain and decide the question as to whether a valid assignment of the decree had been made in favour of the appellant/assignee.

The facts of the case may be briefly recapitulated:-

Suit No.23 of 1972 was filed by one Raghu Nath Prasad for specific performance of an agreement to sell

the house in question. Shamsher Bahadur was the defendant in the said suit. The suit was dismissed by the Trial court, but on appeal, by its judgment dated 7th April, 1975 the Appellate Court allowed the appeal and ordered specific performance of the agreement. The plaintiff Raghu Nath Prasad, the decree holder died on 1st September, 1979. Thereafter, by Order dated 20th November, 1980 the legal representatives of the said Raghu Nath Prasad were brought on record as also the assignee, the appellant herein, since she claimed that the late Raghu Nath Prasad had assigned his interest in the decree in her favour. A Second Appeal was preferred by the defendant against the judgment of the Appellate Court decreeing the suit for specific performance and the said Second Appeal was allowed by judgment and order dated 5.7.1982. Thus the decree of specific performance was set aside and the order of the Trial Court dismissing the suit was restored. After the judgment and order of the High Court, the legal representatives of Raghu Nath Prasad who had been brought on record, did not take any further interest in the matter and did not even challenge the judgment and order of the High Court dismissing the suit filed by the plaintiff Raghu Nath Prasad. Only the assignee namely, the appellant, came up by way of appeal to this Court. By judgment and order

dated 10th February, 1989 this Court allowed the appeal. This Court held that the High Court was in error in dismissing the suit for specific performance. The appeal was allowed.

At that stage a contention was advanced before this Court that the appellant, who was the transferee from the decree holder, had no locus standi to prefer the appeal. This Court noticed that when the appellant (assignee) had made an application before the High Court for being joined as a respondent, the High Court had passed an order to the effect that the applicant be brought on record as a respondent in the appeal, but it would be open to the appellant (before the High Court) to raise such objections as they would like about the locus standi of the applicant qua the controversy which had to be decided in the appeal, at the time of final hearing. This Court noticed that despite the liberty given to raise objections as to the locus standi of the assignee, no such objection was raised. This Court observed :-

"The judgment of the High Court clearly indicate that the respondent did not raise any question in respect of that and in view of this matter the contention raised here for the first time cannot be considered. The appeal is, therefore, allowed.

The judgment and decree passed by the High Court is set aside and that of the Lower Appellate Court is restored. The appellant will be entitled to the cost of this appeal which we quantify Rs.2000/-."

In the absence of any objection raised before the High Court, this Court did not entertain the plea of the respondent raised for the first time in the said Appeal challenging the locus standi of the appellant as an assignee.

After the judgment and order of this Court the decree was put in execution and an objection was filed by the respondents herein under Order 21 Rule 16 C.P.C. The said objection was rejected by the Executing Court as well as by the Revisional Court. The Executing Court held, inter-alia, that Order 21 Rule 16 C.P.C applied only if after passing of the final decree the decree holder makes an assignment. However, if during the pendency of the case there is an assignment of decree, and the rights and liabilities of the parties have been decided, thereafter no notice of proceeding is required to be given under Order 21 Rule 16 CPC. Applying these principles the Executing Court held that under Section 146 CPC Saraswati Devi was fully entitled to execute the decree. It noticed

the judgment of this Court and concluded that no rights were left for the applicant to challenge the title. It also noticed the fact that after the judgment of the High Court dismissing the suit for specific performance the legal representatives of Raghu Nath Prasad did not take any steps to file an appeal in the Supreme Court and it was only the assignee who challenged the judgment of the High Court before the Supreme Court. The Supreme Court while allowing the appeal rejected the argument advanced before it that Saraswati Devi had no locus standi to file the appeal.

The Revisional Court affirmed the order of the Executing Court where after the matter was taken to the High Court by a Writ Petition being Civil Miscellaneous Writ Petition No.8532 of 1996. The High Court took the view that it is yet to be decided as to whether the benefit of the decree in the suit filed by Raghu Nath Prasad will go to his legal representatives or the alleged assignee, and that in turn will depend on whether there was a genuine assignment by Raghu Nath Prasad in favour of Saraswati Devi (appellant herein). Accordingly, the High Court directed the Executing Court to decide the question as to whether there was a genuine and valid assignment in favour of Saraswati Devi (the appellant herein) by Raghu Nath Prasad,

and as to who will get the benefit of the decree of specific performance.

In our view the High Court was completely in error in coming to the conclusion that even after the judgment and order of the Supreme Court allowing the appeal preferred by the appellant herein namely, the assignee, it was still open to the Executing Court to consider the question as to whether there was a valid assignment in favour of the appellant herein. In our view, this Court, by its judgment and order dated 10th February, 1989 in the Appeal preferred by the assignee allowed the appeal preferred by her. The question of locus standi was raised before this Court but that question was not entertained by this Court for the first time, since this Court held that such an objection in the first instance ought to have been raised before the High Court pursuant to the liberty reserved, while adding the assignee as a party respondent in the appeal. Since no objection whatsoever was raised before the High Court challenging the locus standi of the appellant as the assignee of the decree, the same could not be raised before this Court for the first time. If, as held by this Court, that question could not be raised before this Court for the first time since such an objection was not raised before the High Court, it must logically follow

that such an objection cannot be raised in the Executing Court as well. The effect of the judgment of this Court was that the assignment in favour of the appellant was upheld and could not be challenged thereafter. Indeed this Court proceeded to dispose of the appeal preferred by her as the assignee of the decree. The High Court by directing the

Executing Court to examine that question committed an error apparent on the face of record, inasmuch as it failed to notice the finding recorded in the judgment of this Court, particularly the finding recorded in the last paragraph of the judgment, which conclusively decided the question of locus standi in favour of the appellant. In view of the judgment of this Court upholding the right of the appellant as assignee, no challenge to her locus standi as assignee could be entertained by any Court thereafter. The High Court was clearly in error in directing that the same question, which was finally determined by this Court by its judgment and decree of 10.2.1989, shall be gone into once again by the Executing Court. This amounted to directing the Executing Court to go behind the decree which had attained finality. We are, therefore, satisfied that the High Court committed an error which is apparent on the face of the record.

Consequently we allow the appeal, set aside the judgment and order of the High Court and dismiss the

objections filed by the respondents before the Executing Court challenging the locus standi of the appellant as assignee of the decree. The Order of the High Court dated 30th August, 1996 directing the Executing Court to go into that question is set aside, and the Order passed by the Executing Court and the Revisional Court dated 8.8.1994 and 10.12.1996 are restored.

No order as to costs.