

(1927) 01 AHC CK 0040
In the Allahabad High Court

Baij Nath and Another

APPELLANT

Vs

Ram Bharos

RESPONDENT

Date of Decision : 24-01-1927

Acts Referred:

Citation : (1927) 01 AHC CK 0040

Final Decision : Dismissed

Judgement

1. This case has been referred to a Full Bench to obtain a decision on the question, viz., which of the two cases Jurawan Pasi v. Mahabir Dhar Dube [1918] 40 All. 198 and D.S. Apte Vs. Tirmal Hanmant Savnur, was correctly decided.

2. The facts of the case are only partially given in the judgment of the lower Court. This being a first appeal we looked into all the facts involved in the case and we find that having regard to certain facts, to be presently mentioned, the question referred does not arise for decision.

3. The appellants' late father, Ram Lal, and certain other persons obtained a decree for sale which was made final on the 28th September 1912. The date given in the execution application of 28th April 1925 is presumably the date of the preliminary decree. After an infructuous application, another was made on the 22nd December 1915. In the course of this execution the parties came to terms. It was agreed that out of the sum of Rs. 5,338 then found due, the judgment-debtors should pay up at once the sum of Rs. 338 and should pay the balance by yearly instalments of Rs. 330. The judgment-debtors regularly paid three instalments and thereafter made a default. Another application, accordingly, followed and it ended in no result. The fourth application was made on the 22nd October 1923 and the property being ancestral the execution of the decree was transferred to the Collector. In the meantime the judgment-debtors' interest in the property had been sold in execution of a simple money decree obtained by the respondent against them, and was purchased by him, and, consequently, the respondent was made a party as a successor-in-title of the original judgment-debtors. The respondent made a deposit of Rs. 1,000 and

asked for a year's time to enable him to pay up the balance of the decretal amount. The Collector gave three months' time, and finding it unnecessary to keep the case pending in his Court, returned the decree and the papers to the civil Court. After the expiry of the three months which were granted by order dated the 16th October 1924, Ram Lal, by an application dated the 25th January 1925, prayed that the papers of the former execution might be sent to the Collector for execution. This application was granted by order dated the 6th February 1925. Almost immediately after this Ram Lal died and his sons, the present appellants, put in the last and sixth execution application on the 28th April 1925, praying that they might be brought on the record in place of their late father and that the execution might be proceeded with. It is to be noted that Ram Lal had been taking out execution for the benefit of himself and his co-decree-holders and his sons also made a similar prayer.

4. When the execution proceedings were pending in the Court below the respondent Ram Bharos preferred an objection to the execution basing his case on Section 48 of the Civil P.C. He urged that 12 years had expired from the date of the decree, viz., 28th September 1912, and that therefore the sixth application of the 28th April 1925 was not entertainable. The learned Subordinate Judges accepted this plea and dismissed the application as barred by time.

5. In the Court below it was urged that the compromise between the original judgment-debtors and the decree-holder effected on the 18th December 1916 having been accepted and recorded by the Court there came into existence a "subsequent order" within the meaning of Section 48 of the Civil P.C. by which recurring periods were fixed for payment of the decretal amount and that, therefore, the limitation of 12 years would begin from the dates of default in making payment at those recurring periods. The learned Subordinate Judge found that he was bound by the case of *Jurawan Pasi v. Mahabir Dhar Dube* [1918] 40 All. 198 and that the order of the execution Court could not be a subsequent order contemplated by Section 48.

6. In this Court this argument has been repeated on behalf of the decree-holders.

7. As already stated, on examination of the record, and on the admission of the parties, we discovered that certain aspects of the case, already noted above, were not noticed in the Court below. Those were these: The respondent him self asked for a year's time, and obtained three months on the 16th October 1924. The grant of time by the Collector did not in any way dispose of the application. The application should have been kept pending by the Collector on his file. He, however, chose to return the papers to the civil Court. On receipt of the papers, on the 23rd December 1924, the civil Court passed the following order:

The papers having been received to-day it is ordered that an entry be made in the register of execution and the paper be consigned to the record room in the judgeship of Cawnpore along with the basta (the files of other cases).

8. The order shows that the learned Subordinate Judge did not consider the application on the merits and did not decide whether the application was to be dismissed or was to be granted. He received the papers back from the Court of the Collector and ordered that they should be consigned to the record room. As recently held in the Full Bench case Chhattar Singh and Another Vs. Kamal Singh and Others a disposal of an execution proceeding like the above was not a final decision of an execution application. The application must be treated as still pending on the 23rd December 1924. The decree-holder Ram Lal, by his application dated the 25th January 1925, did not ask for any fresh relief. All that he wanted was that the (missal ijra sabik) records of the previous execution should be sent back to the Collector. He was therefore simply asking for reviving the execution which had been suspended by the order of the Collector and by the consignment of the papers into the District Judge's record room. In this view, which is in accordance with the Full Bench case already mentioned, the application of the 25th January 1925 was not a "fresh" application within the meaning of Section 48 of the Civil P.C. It was an application to carry on a previous application which was still pending.

9. When the sons of Ram Lal on his death made the application of the 28th April 1925 they did not ask for any fresh proceedings. They said that Ram Lal's name might be removed and the petitioner's name might be entered in the array of decree-holders. They had to make an application in the usual form of ten columns because there is no rule of law which enables the legal representative of a deceased decree-holder to apply for mere substitution of names. He must apply whenever he does apply, for execution of the decree vide Order 21, Rule 16 of the Civil P.C. It is clear therefore that neither the application of the 25th of January 1925, nor the application of the 28th April 1925, was a fresh application, within the meaning, of Section 48 of the Civil P.C.

10. The result is that the question whether a fresh application should be granted or not has not yet arisen.

11. We set aside the decree of the Court below, dismiss the respondent's objection to the execution and remand the case to the lower Court with the direction that the execution be proceeded with according to law. The appellants will have their costs in this Court and in the Court below.