

(1916) 12 PAT CK 0010
In the Patna High Court

Bakshi Bindeswari Prasad

APPELLANT

Vs

Dheninder Das

RESPONDENT

Date of Decision : 22-12-1916

Acts Referred:

Citation : AIR 1916 Patna 43 : 39 Ind. Cas. 662

Hon'ble Judges : Edward Chamier, C.J.;Jwala Prasad, J

Bench : Division Bench

Judgement

1. In this case a decree was passed by a Subordinate Judge against one Harihar. The suit was dismissed against Bindeswari. The plaintiff in the suit appealed to the High Court and that Court passed a decree against Harihar and Bindeswari jointly for the principal sum due together with interest thereon up to the institution of the suit. The decree of the High Court made the defendant Harihar alone liable for interest after the date of suit till realization. While the appeal of the plaintiff was pending in the High Court, execution was taken out and Rs. 4,140 odd were recovered by sale of the property of Harihar. The decree-holder has now applied for execution against both Harihar and Bindeswari Prasad. The latter objected that he should be given credit for half of the sum realised by sale of Harihar's property. The Subordinate Judge rejected this objection and there can be no doubt that his decision is correct. The money was recovered at a time when there was no decree against Bindeswari at all and it is impossible to hold that it was received by the decree-holder on account of the debt due from Harihar and Bindeswari Prasad jointly, in face of the fact that Harihar both under the decision of the Subordinate Judge and under the decision of the High Court is liable separately for other sums. The decree holder is plainly entitled to say that the sum of Rs. 4,140 odd was received by him on account of the separate liability of Harihar. The appeal, therefore, fails. The decree-holder filed a cross-objection, in which he challenges the decision of the Court with regard to the liability of Harihar but as Bindeswari is the appellant a cross objection which is directed against Harihar is not admissible. Harihar is not a party to this appeal There is also in the cross-objection a plea that the Court below passed a wrong order with

regard to costs. This objection, no doubt, is admissible, but it seems to us that the order of the Subordinate Judge is not open to objection. Neither party was wholly successful but the claims of both seem to have failed in p Article Both appeals are dismissed. The appeal of Bindeswari Prasad is dismissed with costs. Hearing fee two gold mohurs. The cross-appeal is dismissed but there will be no order as to costs.