
(1955) 07 CAL CK 0032

In the Calcutta High Court

Case No : Civil Revision Case No. 947 of 1955

Basanta Kumar Bhattacharjee

APPELLANT

Vs

Panchu Gopal Dutta and Others

RESPONDENT

Date of Decision : 21-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 1956 Cal 23 : 59 CWN 1117

Hon'ble Judges : K.C. Das Gupta, J;Guha, J

Bench : Division Bench

Advocate : Ram Mohan Bhattacharjee, for the Appellant;

Judgement

1. The petitioner obtained four money decrees against the opposite parties Nos. 1 to 4 and put them into execution in Money Execution Cases Nos. 69 of 1952, 13 of 1953, 37 of 1953 and 38 of 1953 in the 1st Court of the, Subordinate Judge at Alipore. Properties belonging to the judgment-debtors, opposite parties Nos. 1 to 4 were sold in Money Execution Case No. 8 of 1953 which had been started by opposite party No. 6 for execution of a decree obtained by him against them for a sum of Rs. 7,970/-.

The sale took place on 10-6-1953 and was confirmed on 16-7-1953. On 10-7-1953 the petitioner filed an application for rateable distribution of the sale proceeds of Rs. 8,115/- in respect of his claims in all the four Execution cases. The Court, however, held by its order dated 2-12-1953 that the petitioner was not entitled to rateable distribution in respect of Money Execution Cases Nos. 37 and 38 of 1953 but his prayer for rateable distribution in respect of the other cases should succeed. On that date he passed the following order :

"Basanta Kumar Bhattacharyya would, therefore, get rateable distribution in respect of Money Execution Case No. 69 of 1952 and Money Execution Case No. 13 of 1953. His prayer for rateable distribution in respect of other two execution cases is disallowed."

Pat up these execution cases on 13-1-54 for further orders in presence of both sides for determining the amount to be distributed between the present decree-holder and Basanta Kumar Bhattacharyya."

2. Before, however, this amount could be determined, a letter was received from the Certificate Officer on 3-2-1954 requesting the Court not to make any payment out of these sale proceeds without notice to him. On 24-8-1954 a notice of attachment under R. 22 of the Rules under the Public Demands Recovery Act was received from the Certificate Officer withholding payment of Rs. 8,115/- until further orders of that Court.

In spite of this an order was passed by the Court on 18-11-1954 that the present petitioner would get Rs. 6,281/7/- and the opposite party No. 6 would get Rs. 1,833/9/- out of the sale proceeds. These moneys have not, however, been paid out to these decree-holders in accordance with the order but had been ordered to be remitted to the Certificate Officer in compliance with his request, based on the letter of attachment received in the Court on 24-8-1954.

3. The Court below has held that as a result of this notice of attachment the money could not be paid to any of the decree-holders and as this attachment order by the Certificate Officer was in respect of a claim payable to the State of West Bengal, he held that the claim was entitled to priority.

4. We do not think it can be doubted that if on the date the notice of attachment was received money belonging to the judgment-debtors remained in the hands of the Court, the money would have to go to the payment of the debt due to the State. The question remains whether on that date, namely, 24-8-1954 there was any money of the judgment-debtors in the hands of the Court.

It appears to have been argued before the Court below that as soon as the sale was held, the sale proceeds became the money of the decree-holder. This contention was rejected by the court below and this extreme position has not been pressed before us. It has, however, been urged before us that once the Court allowed the prayer for rateable distribution, the money ceased to be the Judgment-debtors' property.

This contention, we think, should prevail. The order allowing the application for rateable distribution that was passed on 2-12-1953 should, we think, be reasonably read as deciding that the decree-holders had title to the money. What remained to be done was the ascertainment of the exact amount which each decree-holder was entitled to and payment of the same.

The decision as regards title had already been made and with the decision that the money was the decree-holders' money, the position, in our opinion, was that it could no longer be considered in law to be the judgment-debtors' money. The question of priority of the State's claim does not, therefore, fall to be decided. On the date the letter of attachment of the Certificate Officer was received, there was no money belonging to the judgment-debtors in the hands of the Court.

The entire amount of Rs. 8,115/- which had earlier been the judgment-debtors' money had been declared by the Court to be the decree-holders' money and after this declaration no action could be taken by the Court on the basis that it was still the Judgment-debtors' money. We accordingly, hold that the learned Court below was wrong in complying with the request of the Certificate Officer to remit the sale proceeds.

5. We, accordingly, set aside his order and direct that the matter be now dealt with in accordance with law in pursuance of the Court's order dated 18-11-1954 by which it was decided that the present petitioner would get Rs. 6,281/7/- and the opposite party No. 6 would get Rs. 1,833/9/- out of the sale proceeds by way of rateable distribution.

6. The Rule is, accordingly, made absolute.

7. There will be no order as to costs.