

(1942) 02 AHC CK 0016
In the Allahabad High Court
Case No : First Appeal No. 463 of 1935

Bhaggo Bibi

APPELLANT

Vs

Sri Iswar Radha Ramanji and Beharijl through Baldeo Narain
and others

RESPONDENT

Date of Decision : 05-02-1942

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145, 47

Citation : (1942) 02 AHC CK 0016

Hon'ble Judges : Verma, J;Allsop, J

Bench : Division Bench

Advocate : Shah Mohammad Faizullah, for the Appellant; Mukhtar Ahmad for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Allsop and Verma, JJ.—Musammat (sic) the Plaintiff Appellant, went after the death of her husband to live with a man called Jokhu Lal. She was the over of certain houses which Jokhu Lal mortgaged to Baldeo Narain and others. The mortgages instituted a suit for the sale of the mortgaged property and obtained a decree. Thereafter the Allahabad Improvement Trust acquired some of the houses and deposited a sum of over Rs. 9,000 as compensation to the owner. The holders of the decree for sale of the mortgage property (sic) the money in execution of their decree Must Bhaggo Bibi, the Plaintiff Appellant, then objected upon the ground that the houses were hers and not Jokhu Lal's. (sic) objection was dismissed and she instituted a suit for a declaration that the property was hers, She obtained a decree from the trial Court and an appeal was filed by the opposite parties in this Court. In the (sic) of the appeal the question arose whether Mst. Bhaggo Bibi should be allowed to withdraw the money which had been deposited by the Improvement Trust and ultimately she was allowed to withdraw it on the condition that she furnished security for the return of the money if the appeal succeeded in whole or in part. She executed a security bond

in favour of the Registrar of this Court Ultimately the appeal against Mst Bhaggo Bibi was party allowed and the result was that she was liable for the return of part of the money withdraw by her from the deposit made by the Improvement Trust. The holders of the decree for sale then went to the Court which was executing their decree and made an application that the money due to them should be recovered from Ms. Bhaggo Bibi on the basis of the security bond executed be her in favour of the Registrar of this Court. We are (sic) that she was imploded as a party under the provisions of Section 145 of the Coda of Civil Procedure. We do not know whether she made any objection or not, but we may assume that she did for the purposes of this appeal and if that is so the question was decided against her by the Court executing the mortgage decree. Her property was put to stele in execution of that decree. She then instituted the suit which has given rise to this appeal in order to obtain a declaration that her property was not liable for sale ii execution of the mortgage decree. The learned Judge of the Court below has held that the property was hers and that it was not liable for sale under the mortgage decree as such. He has also expressed his opinion that it was probably not liable for sale in execution of the mortgage decree on the basis of the security bond execute by the Appellant in favour of the Kegitrar of this Court, but. He has held that the court executing the decree decided the point against the Appellant, that she did not appeal against that order, that the order is binding unto her and that consequently she has no right to obtain a decree in a different suit that her property could not be sold by the court executing the mortgages decree. With this c inclusion we agree. Learned Counsel for the Appellant has argued that the Court executing the mortgage decide had no jurisdiction to sell the property and that any order passed by him for the sale of the property was an order passed without jurisdiction. In seems to us that there is no force in this argument. The Appellant has not place any of the necessary documents before us in our printed book. We do not know what application was made to the court execute the mortgage decree or what abjection, if any, was take by Musammat Bhaggo Bibi or what order was passed but apparel by it was lead that Musammat Bhaggo Bibi was liable under the provisions of Section 145 of the Code of Civil Procedure. Whether this order was right or wrong, it was "binding" upon those who were parties to the proceedings in which it was passed. If a question arose in the court executing the decree whether Musammat Bhaggo Bibi was liable under the provisions of Section 45 of the Coda of Civil Procedure, it was the executing court alone which had jurisdiction to decide that question and o ice the question was decided, the decision was binding between the parties unless it was questioned in appeal. Once it was held that Musammat Bhaggo Bibi was liable u/s 145, she became a party under the provisions of Section 47 of the CPC and any order for the sale of her property amounted to a decree which would bind the parties and would operate as res judicata in the suit which is the subject of appeal before us. A, we have already said, we are satisfied that the decision of the learned Judge of the court below was correct and we, therefore, dismiss the appeal with costs.