
(1950) 09 AHC CK 0029

In the Allahabad High Court

Case No : Execution Decree Appeal No. 15 of 1947

Bhagwati Din

APPELLANT

Vs

Ram Prasad

RESPONDENT

Date of Decision : 26-09-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 53
Limitation Act, 1908 — Article 182, 182(5)

Citation : AIR 1952 All 478

Hon'ble Judges : Agarwala, J

Bench : Single Bench

Advocate : B.K. Dhaon, for the Appellant; S.N. Srivastava and K.S. Verma, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a decree holder's appeal and the only point for consideration is whether an execution application made by the appellant in the lower Court was barred by limitation. The facts briefly are as follows. The appellant Bhagwati Din obtained a decree against two persons Ram Prasad and Mt. Badami on 6-11-1933. Thereafter Ram Prasad applied for instalments and for the reduction of interest under the Agriculturists' Belief Act and the interest was reduced and instalments granted, the last instalment being payable on 4-7-1940.

2. One Nand Kumar had a decree against Bhagwati Din appellant. On 16 12 1941 Nand Kumar applied for execution of his decree by attachment of the decree in favour of Bhagwati Dm. Notices were sent to Bhagwati Din and to the judgment-debtors, Ram Prasad and Mt. Badami but it is not clear whether the decree in favour of Bhagwati Din was in fact attached. But we will assume that it was attached. The application of Nand Kumar was, however, ultimately dismissed on 31-7-1942.

3. On 22 2-1945 Bhagwati Din applied for execution of his decree. He also prayed that the heirs of Mt. Badami who had died in the meanwhile be also

brought on the record. These heirs were, Ram Prasad one of the judgment debtors and Babu Ram. Notices were issued to Ram Prasad and Babu Ram but they did not appear. The Court made the order of substitution as was prayed for by Bhagwati Din. Ultimately, however, this execution application was consigned to the record room. Then Bhagwati Din made a second application for execution on 26-7-1946. Ram Prasad objected that the execution application was barred by time. The trial Court held that the application was not barred by time but on appeal the lower appellate Court upheld the objection of the judgment-debtor.

4. Against that order the decree, holder has come up in second appeal to this Court and the point for consideration is whether the application made by Nand Kumar on 16 12 1941 can be considered to be a step-in-aid of execution of Bhagwati Din's decree. One other point was raised namely that the order of substitution of heirs of Mt. Badami should be taken to be a decision that the first execution application was not barred by time, and that such decision bars the hearing of the objection raised by the judgment-debtor. This plea, however, cannot succeed in view of the Full Bench decision of this Court reported in Genda Lal Vs. Hazari Lal, .

5. Now it is admitted that Nand Kumar, after he had obtained an order of attachment of Bhagwati Din's decree did not proceed further to execute the attached decree. He did not make any application for execution. Order 21 Rule 53 which makes provision for attachment of decrees, after laying down the procedure for attachment provides :

"(2) Where a Court makes an order under Clause (a) of Sub-rule (1), or receives an application under sub head (ii) of Clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree of his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in Sub-rule 1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof."

It is clear that upon the decree being attached the attaching judgment creditor becomes the holder of the attached decree and has to make an application for the execution of the attached decree before the attached decree can be executed.

6. If an application had been made by the attaching decree-holder for the execution of the attached decree that would have been an application by the holder of the attached decree and as such would have saved limitation within the meaning of Article 182 Clause (5), Limitation Act.

7. The argument of Mr. Dhaon is that any step taken before making an application for the execution of the attached decree must also be considered to be a step in-aid of execution because without that step it would have been

impossible for the attaching decree holder to become the holder of the attached decree and to execute it. The argument looks attractive but loses sight of the fact that we are concerned with steps-in-aid of execution to save limitation for the attached decree as against the judgment debtor of that decree. We have, therefore to see what are the steps which have been taken by the decree holder or his representative for the execution of the attached decree or for the advancement of the execution process and any step that may have been taken by a third person before he became the holder of the decree will not affect the position qua the judgment-debtor of the attached decree. An attaching creditor becomes the holder of the decree after the order of attachment is passed. His application for attaching the decree is made at a time when he is not the holder of the decree and steps taken by him at that stage cannot be considered to be steps in-aid of execution of the attached decree.

8. This view finds support from two decisions Walchand Ramchand v. Yeshwant Deorao A. I. R. 1849 Bom. 379 and Anilkumar Ghosh and Others Vs. Hemantakumar Ghosh and Others, .

9. Mr. Dhaon has relied upon the following cases, Lachman v. Thondi Ram, 7 ALL. 382, Adhar Chandra v. Lal Mohun, 24 Cal. 778, Gya, Loan Office Co. Ltd. v. Dhirit Kundal Lal, 8 Ind. Cas. 675 and Bishan Sahai v. Amir Singh, A. I. R. 1931 Lah. 703. I have examined all these cases and I do not think that they advance the case of the appellant in any way.

10. There is no force in this appeal and it is dismissed with costs. Stay order dated 18-1947 is discharged.