

(1925) 05 PAT CK 0023
In the Patna High Court

Chaudhury M. Nazirul Hasan

APPELLANT

Vs

Mr. Abdul Wahab Khan and Others

RESPONDENT

Date of Decision : 27-05-1925

Acts Referred:

Succession Certificate Act, 1889 — Section 4

Citation : 89 Ind. Cas. 811

Hon'ble Judges : Kulwant Sahay, J;Adami, J

Bench : Division Bench

Judgement

Kulwant Sahay, J.—This is an appeal on behalf of the judgment-debtor against an order of the Subordinate Judge of Monghyr rejecting his objection to the execution of a decree and directing the execution to proceed.

2. It appears that there were four decree-holders who obtained a decree on the 12th January 1921 on account of mesne profits. They were Abdul Wahab Khan, Musammat Noorjahan Begum, Bibi Bashiran and Gulab Khan. Bibi Bashiran is dead and the decree-holder Abdul Wahab Khan claims her share under a deed of ekrarnama dated the 28 in June 1915. Gulab Khan is also dead. One Musammat Habiban claims to be the widow of Gulab Khan, and the present application for execution has been filed by Abdul Wahab Khan who claims to execute the decree as the representative of Bibi Bashiran as well as in his own individual capacity by Noorjahan Begum and by Musammat Habiban as the widow and heiress of Gulab Khan.

3. The objection of the judgment-debtor was that Bibi Bashiran being dead, Abdul Wahab had no right to execute the decree for her share of the money without obtaining a Succesion Certificate. Secondly, the ekrarnama of the 28th June 1915 was not admitted and it was contended that the execution could not proceed so long as the legal heirs of Bibi Bashiran were not brought on the record. Next it is contended that Bibi Habiban was not the wife of Gulab Khan but that one Khizar Khan was his heir and that this Khizar Khan had transferred his interest to one Ram Sahai Lai and Abdul Ghani and that, therefore, Bibi Habiban

had no right to execute the decree.

4. In their application for execution the three persons named above stated that although there was no specification in the decree itself as regards the shares of the different decree holders yet the two applicants, Abdul Wahab and Noorjahan Begum, were entitled to 11-annas share on account of their own interests as well as the interest of Bibi Bashiran, and that Bibi Habiban was entitled to the remaining 5 annas share on account of the share of Gulab Khan, deceased. The judgment-debtor objected that the share of Gulab Khan was one half and not 5 annas out of 10 annas in the decree. In the application for execution it was prayed that the petitioner Abdul Wahab Khan might be declared to be the representative of Musammat Bibi Bashiran, and the petitioner Bibi Habiban might be declared to be the representative of Gulab Khan deceased, and the execution proceedings may be taken on behalf of the applicants for realization of the entire 16-annas of the decree. It, was further stated that if for any reason it be found irregular on the part of the applicant, Musammat Bibi Habiban, to have joined in the application, for execution, then only Abdul Wahab Khan, one of the decree-holders, may be, treated as an applicant for execution of the decree and the entire decretal amount together with interests and costs might be realised under the provisions of Order XXI, Rule 15 of the C.P.C.

5. The learned Subordinate Judge did not decide the question as to whether Abdul Wahab Khan was the representative of Bibi. Bashiran and as to whether Musammat Bibi, Habiban was the representative of Gulab, Khan He was of opinion that as there was, no dispute as regards Abdul Wahab Khan, being the decree-holder and as under the law he could execute the whole decree for himself as well as for the other decree-holders, it was proper to execute the whole decree at the instance of Abdul Wahab. Khan one of the decree-holders and to take proper steps for safe guarding the interests, of the other decree-holders. He accordingly ordered the execution to proceed, but he directed that Abdul Wahab Khan will not, receive any payment from the judgment-debtor towards the decree out of Court nor the judgment-debtor was to make any payment or any settlement either with Abdul Wahab Khan or with any of the persons who claimed to be the heirs of Gulab Khan. He directed that all payments towards the decree must be made in Court.

6. Against this order of the Subordinate" Judge the judgment-debtor has come up in appeal to this Court; and it is contended, on his behalf that the Subordinate Judge was bound to enquire as to who were the, heirs of Gulab Khan; that the learned Subordinate Judge was wrong in directing the decree to be executed under the provisions of Order XXI, Rule 15, that he ought not to have allowed the execution to proceed without the production of a Succession Certificate by Abdul Wahab Khan as the heir of Bibi Bashiran; that if Abdul Wahab Khan claimed to execute the decree as an assignee of Bibi Bashiran under the ekrarnama of 28th of June 1915 then the learned Subordinate Judge was wrong in directing the, execution without notice upon the heirs of Bibi Bashiran under

the provisions of Order XXI, Rule 16 of the Code.

7. In support of the first contention, namely as regards the necessity to make an enquiry as to who were the heirs of Gulab Khan the learned Advocate for the appellants refers to Order XXII, Rule 5 of the Code which prescribes that where the question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant such questions shall be determined by the Court, and to Rule 12 of the same Order which says that nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order, and does not limit the provisions of Rule 5 in the same way. On the other hand it has been contended by the learned Advocate for the respondent that Rule 5 has no application to execution proceedings because Rule 5 is based on Rules 3 and 4, and if Rules 3 and 4 do not apply to proceedings in execution, Rule 5 too has no such application.

8. In my opinion, having regard to the view taken by the Subordinate Judge it was not necessary for him to determine as to who were the legal representatives of Gulab Khan. He directed the execution to proceed under the provisions of Order XXI, Rule 15 and he gave proper directions to safeguard the interests of the other decree-holders whoever they might be. The argument of the learned Advocate for the appellant that he could not make the order under Order XXI, Rule 15, without determining as to who the representatives of Gulab Khan were does not appear to be sound. He contends that before making an order under Order XXI, Ruler. 15 it was necessary for the Subordinate Judge to enquire as to who the other, decree-holders were for whose benefit the execution was to proceed. In my opinion it was not necessary for the Subordinate Judge to do so before he could make an order under Order XXI, Rule 15.

9. As regards the second contention, namely, that as no execution was prayed for the benefit of the other decree holders the Subordinate Judge was not justified in making the order under Order XXI, Rule 15, I need only observe that it was expressly stated in the application that if for any reason it was found irregular on the part of Mr. sammat Bibi Habiban to join in the applicative-for execution then only Abdul Wahab Khan one of the decree-holders might be treated as an applicant for execution and the entire decretal amount might be realised under the provisions of Order XXI, Rule 15. It is contended that it is not stated in the application that execution of the whole decree was to proceed for the benefit pf the decree-holders or for the benefit of the surviving decree-holders and the legal representatives of the deceased decree-holders. No doubt the words are not used in the application, but the reference to Order XXI, Rule 15, in the application clearly indicates that this is what was intended.

10. As regards the third objection, namely, that the execution could not proceed without the production of Succession Certificate, and the fourth objection that it could not proceed without notice on the heirs of Bibi Bashiran, I may observe that having regard to the order to proceed with the execution under Order XXI, Rule 15 these questions do not really arise in the case. It may, however, be

noticed that Abdul Wahab Khan did not claim to execute the decree as the heir of Bibi Bashiran but under an assignment or conveyance from her and Section 4 of the Succession Certificate Act had no application to such a case.

11. In my opinion none of the grounds taken on behalf of the appellant is sound and can be sustained. The appeal must be dismissed with, costs.

Adami, J.

12. I agree.