
(1921) 12 PAT CK 0004
In the Patna High Court

Chowdhury Ram Prasad Rai and Others APPELLANT
Vs
Mahesh Kant Chowdhury RESPONDENT

Date of Decision : 16-12-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1922 Patna 525 : 65 Ind. Cas. 122

Hon'ble Judges : Ross, J;Jwala Prasad, J

Bench : Division Bench

Judgement

Jwala Prasad, J.—This is a Letters Patent Appeal against a decision of a Single Judge of this Court. By his order the learned Judge decreed the appeal presented to this Court.

2. The respondent obtained a decree against certain persons and in execution of that decree he caused the property of the appellant judgment-debtor to be advertised for sale. On the 17th of April 1919, the date fixed for sale, he applied to the Court to dismiss this execution case. This application was rejected by the Munsif, with the result that the property was put up for sale and was purchased by the appellant. The decree-holder, being dissatisfied with the decision of the Munsif, preferred an appeal to the Court of the District Judge of Darbhanga. The District Judge, being of the opinion that the Court had no power to sell the property on its own account in disregard of the application of the decree-holder, set aside the order of the Munsif and also the sale held in pursuance thereof. The purchaser, therefore, appealed to this Court. The appeal was heard by Mr. Justice Das, He held that.

3. The learned Judge of this Court was perfectly right in holding that no appeal lay from the order of the Munsif rejecting the application of the decree-holder and ordering the sale of the property in question. I, however, think that the learned Judge should have gone further and should have set aside the order of the Munsif in exercise of the powers vested in this Court u/s 115 of the Code of Civil Procedure. The Munsif's order was certainly without jurisdiction and not

sanctioned by any provisions of the Civil Procedure Code, Execution was taken by the decree-holder and the powers of the Court with respect to that execution were invoked by the decree-holder. The application was made under Order XXI, Rule 1; and the nature of the relief and the mode for the enforcement of that relief were expressly stated by the decree-holder--vide Rules 10 and 11 of Order XXI, Civil Procedure Code. The decree- holder expressly prayed for the execution of the decree and for the sale of the property of the judgment debtor. He had the right to withdraw the execution petition at any moment he liked. No doubt Order XXIII, which relates to the withdrawal and abandonment of a claim, does not apply" to execution proceedings; but there is nothing to prevent a decree-holder from withdrawing his execution and getting it dismissed, if he does not want to claim any relief in respect of the execution. The party which sets the Law Court in motion has a right to withdraw the proceedings from the Court. Therefore, the order of the Munsif was wrong and he acted certainly without jurisdiction in persisting in selling the property in spite of the wishes of the decree-holder to the contrary.

4. Now two broad orders were passed in this case--first by the Munsif and second by the lower Appellate Court. None of these Courts had any jurisdiction to pass their respective orders. This, therefore, was a "fit case to set right the wrong order of the Munsif. Section 115 of the CPC empowers the Court to act suo motu on an application of the aggrieved person, the District Judge had no jurisdiction to deal with the matter in appeal and to set aside the order of the Munsif. He accordingly set aside the order of the District Judge and restored that of the Munsif. Nor is there any limit of time prescribed for it. In fact the decree-holder need not have come to this Court if he had obtained an order of the District Judge, however wrong and without jurisdiction. Therefore, this Court, having been apprised of an order without jurisdiction passed by the Munsif, should have set aside that order u/s 115 of the Code. Authorities are not wanting where in such cases the High Court exercised their revisional jurisdiction u/s 115 of the Code: *Andrew Anthony v. Rev. J.M. Dupont* 4 M. 217 : 1 Ind. Dec. 986, *Zamiran v. Fateh Ali* 32 C. 146 and *Debi Das v. E.az Husain* 28 A, 72 : 2 A.L.J. 749 : A.W.N. (1905) 191.

5. I, therefore, decree this appeal and set aside the order of the learned Judge as well as that of the Munsif, and consequently the sale in execution is set aside. In the circumstances. I make no order as to costs.

Ross, J.

6. I agree.