

(1936) 01 PAT CK 0036
In the Patna High Court

Dhanoo Lal

APPELLANT

Vs

Sardapat and Another

RESPONDENT

Date of Decision : 31-01-1936

Acts Referred:

Citation : AIR 1936 Patna 305

Hon'ble Judges : Saunders, J

Bench : Division Bench

Judgement

Saunders, J.—In a partition suit in the Second Subordinate Judge's Court at Patna one Chandipat Sahay was appointed receiver of the properties to be partitioned, and being discharged after the suit had been compromised delivered possession of the properties to the defendants in accordance with the terms of the compromise. He subsequently made an application to the Court for the payment of a sum of money which he had spent as receiver and an order was passed by the Court in his favour in June 1933. In the meantime the properties of the defendants in the partition suit had been sold in execution of a decree in another suit and had been purchased by the decree-holder in that suit. After the satisfaction of the decree there was a sum of Rs. 47,000 in deposit to the credit of the judgment-debtors. A number of other decree-holders applied to the execution Court which was the First Subordinate Judge's Court at Patna for rateable distribution of this sum among themselves. In August 1933 Chandipat Sahay applied for execution of the order made in his favour by the Subordinate Judge, Second Court and an attachment was accordingly made of the money standing to the credit of the judgment debtors in the execution case. An objection was taken by one of the decree-holders that the receiver was not entitled to priority, but the objection was dismissed and an application by that decree-holder to the High Court for revision of the order was also dismissed, the petitioner being a party to those proceedings. The order could not be executed because proceedings started by the judgment-debtors under Order 21, Rule 90, Civil P.C, were pending, and before that matter had been finally decided Chandipat died. In November 1935 an application was made by his heirs to the

execution Court for payment of the money to them. The petitioner, who is another person holding a decree against the same judgment-debtors, made an application to the execution Court objecting to the payment of the money to Chandipat's heirs and on the date fixed for the hearing of this objection made an application for time which the execution Court rejected. The present application is for revision of that order.

2. It is contended on behalf of the petitioner that the order made by the execution Court in favour of Chandipat was not in accordance with law, but I agree with the learned Subordinate Judge that he could not be permitted to question the order after it had been affirmed by the High Court in a case in which he himself was a party. It is, however, contended that, even if the order in Chandipat's favour be taken to be a valid order, the petitioner was entitled to object to the payment of the money to Chandipat's heirs on the ground that they were not entitled to make the application because the execution case had come to an end on the death of their father and that therefore they ought to have made a fresh application for execution. This objection was not taken in the lower Court nor in the present application. But apart from this consideration it has, in my opinion, no substance. It appears that the previous execution case had been dismissed on full satisfaction, but, as I have said, the money could not be paid to Chandipat until the final disposal of the judgment-debtors application to set aside the sale made under Order 21, Rule 90, Civil P.C. As soon as that case had been decided Chandipat's sons were entitled to claim payment of the money which the execution Court had found was payable to their father. The application is accordingly dismissed with costs. Hearing fee two gold mohurs. The order of stay is discharged.