
(1927) 04 AHC CK 0013
In the Allahabad High Court

Firm Ajodhia Prasad Ram Lal

APPELLANT

Vs

Mahadeo Prasad and Others

RESPONDENT

Date of Decision : 12-04-1927

Acts Referred:

Citation : AIR 1927 All 574

Final Decision : Allowed

Judgement

1. This is an appeal from an order by the execution Court in Cawnpore which appears to us in substance to have denied the jurisdiction of the Court. The decree-holders obtained a decree against four persons who were in partnership, but in respect of whose liabilities special rights were established by such a decree. All other judgment debtors were jointly and severally liable for Rs. 18,000 odd, while Chhote Lal, one of the four, was responsible, in his individual capacity for the balance of Rs. 30,000 odd, the total decree being for Rs. 48,000 odd. The judgment-debtor, either jointly as a whole, or severally in different shares-and that is the substantial matter which has to be decided had a large quantity, amounting to nearly 500 bags, of a valuable substance called catechu in Bahraich. One of the decree-holders, Ram Lal was appointed Receiver under an order of attachment of these bags and a large number of the bags, that is to say, all except 27, were sold and the proceeds, amounting to Rs. 43,000 odd, are in the custody of the Bahraich Court together with the balance of unsold bags. The decree-holders allege that the bags belong to Chhote Lal. The other judgment-debtors allege that they belong to him, so that only Rs. 18,000 of the decretal amount for which they are liable is realizable out of the proceeds of the bags. A suit is said to be going on between the judgment-debtors in the Bahraich Court about this matter, to which, of course, the decree-holders are no parties. The decree-holders made an application in the execution Court at Cawnpore u/s 47 for the attachment of the proceeds of the bags. The other judgment-debtor objected and the procedure is thus described by the Subordinate Judge:

This is an objection purporting to be u/s 47 to an execution case. The facts, as alleged in the application for execution and admitted before me, are that the decree-holder holds the decree under execution against four judgment-debtors but their liability under the decree was specified for various items i.e., for one item all the four judgment-debtors were jointly and severally liable, and for the other item one judgment-debtor only was liable.

2. The other Judgment-debtors contend that as a suit between these very judgment-debtors was going on in the Bahraich Court and that it would be decided in that Court who was the owner of the bags and the money, the execution Court ought to stay its hand. It seems to us that the question thus stated is clearly a question arising under the very section of the Code to which the learned Judge refers. Section 47 directs that questions arising between the parties to the suit in which the decree was passed, shall be determined by the Court executing the decree. The objectors whose objection appears to have been accepted by the learned Judge, rely upon the provisions of O.21, Rule 52 which runs:

Provided that where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not a judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

3. It is clear that this rule cannot revoke or override Section 47, but we see no difficulty in working the two together. No question arises by virtue of any assignment, attachment or otherwise, and no person is making any claim to the money in Bahraich, who is not a judgment-debtor. The learned Judge says that, so far as the judgment-debtors, who claim to be interested in the money representing the difference between the Rs. 18,000 and the Rs. 48,000 is concerned, they must be treated as third persons for the purposes of the present objection. We do not understand why, or what legal justification there is for adopting this view. Such a view would clearly lead to serious embarrassment to the decree-holder and possibly grave injustice. The suit which is going on between these judgment-debtors in Bahraich may last for a long time and may be further delayed by appeals. Further, it might under this order be deliberately and collusively delayed. Yet the decision, when arrived at, would not bind the decree-holder who would be no party to it and who would have no opportunity of being heard. We can find nothing to justify the refusal of the learned Judge to decide the merits of the decree-holder's application which was properly made u/s 47. We must, therefore, allow the appeal with costs, including fees in this Court on the higher scale, and remit the case to the execution Court to decide the merits according to law.