

(1937) 04 PAT CK 0022
In the Patna High Court

Firm Johar Mal-Paran Ram

APPELLANT

Vs

Bindeswari Prasad Singh and Others

RESPONDENT

Date of Decision : 13-04-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 14

Citation : AIR 1937 Patna 522

Hon'ble Judges : Fazl Ali, J;Dhavle, J

Bench : Full Bench

Judgement

Fazl Ali, J.—The only serious question to be decided in this appeal is one of limitation and it arises upon the following facts: The appellant firm obtained a decree for money against the father of the respondents and realized part of the decretal amount by putting the decree into execution on 22nd December 1930. The decree was again executed on 18th November 1931 and a third petition for execution was filed on 29th March 1934. The present application being filed in 1935 it was contended on behalf of the respondents that it was barred under Article 182, 01. (5), inasmuch as the previous application which had been made on 18th November 1931 was not in accordance with law.

2. It is necessary to state here that in the decree which is sought to be executed, it was clearly provided that the loan incurred, by the father of the respondents was not binding either on them or their uncles. Notwithstanding this provision, when the appellants made the third application for execution on 29th March 1934, the only prayer which they made in that application was that the decree be realized by the arrest of the respondents. Now it has not been seriously disputed before us that the relief prayed for in this application was one which the Court was not competent to grant, but Mr. Bankim Chandra De on behalf of the appellant contended that an application for execution must be deemed to be made in accordance with law, if it complies with the requirements of Order 21, Rule 14. Mr. De tries to support his contention by referring us to the decision of the Judicial Committee in AIR 1934 14 (Privy Council) , and of this Court in

Jogendra Prasad Narayan Singh v. Mangal Prasad Sahu AIR 1926 Pat 160 but neither of these oases purports to decide directly whether an application which asks for a relief which the Court is not competent under the law to grant can be treated as an application made in accordance with law. On the other hand that very question appears to have been dealt with in *Chattar v. Newal Singh* (1889) 12 All 64 and *Langtu Pande v. Baijnath Saran Pande* (1906) 28 All 387.

3. In these cases it was held that the expression applying in accordance with law means applying to the Court to do something in execution which by law that Court is competent to do and that it does not mean applying to the Court to do something which either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law he must have known the Court was incompetent to do. This is the view which was accepted by a Division Bench of this Court also in *Amrit Lal v. Murlidhar* AIR 1922 Pat 188 and as at present; advised I am not prepared to dissent from it. The words "in accordance with law" which occur in Article 182(5) are general and cannot be construed to mean only "in accordance with the Civil Procedure Code". In my opinion therefore the present application was not in accordance with law whether treated as an application for execution or an application for taking a step-in-aid of execution. I would therefore affirm the judgment of the Court below and dismiss the appeal. There will be no order as to costs.

Dhavle, J.

4. I agree. If an application for execution, does not comply with the requirements of Rules 11 to 14, Order 21, Civil P. C, B. 17 of the same Order, as it now stands, empowers the Court to allow the defect to be remedied within a given time, and if the decree-holder fails to remedy the defect within the time fixed, to reject the application. Where this power is not exercised and the application is entertained, it may from one point of view be said that the application is in accordance with the law. This, however, would be too narrow and technical an interpretation of the expression "in accordance with law" in Article 182(5), Lim. Act. A similar contention was negated by Straight and Tyrrell, JJ. in *Chattar v. Newal Singh* (1889) 12 All 64 where the learned Judges held that the expression "in accordance with law" must mean an application to do something in execution which by law that Court is competent to do, plainly referring not merely to the law of execution to be found in the CPC and the Limitation Act, but to law in general and the learned Judges held that the expression excluded applications to the Court to do something which either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law he must have known that the Court was incompetent to do.

5. In the present case the sons may have been liable to the extent of the father's assets in their hands in view of their pious obligation, though that point has been actually contested before us on behalf of the respondents on the authority of *Binda Prasad and Another Vs. Raj Ballabh Sahai*, in view of the fact that the joint family included members other than the father and his sons. That

decision, however, was overruled by a Full Bench of the Allahabad High Court in Chotey Lall Vs. Ganpat Rai and Another . It is not necessary on the present occasion to consider how exactly the position of the sons was affected by the fact that they were impleaded in the suit but no decree was passed against them in the view that the liability was their father's personal liability. Whatever may be the nature of the liability of the sons, it is not pretended that they were liable to be arrested in execution of the decree. The prayer for their arrest in execution could not, on any possible view of the law, be said to have been in accordance with law. It is therefore impossible to treat that application as saving limitation from any point of view.