
(1925) 01 PAT CK 0031
In the Patna High Court

Gajadhar Prasad

APPELLANT

Vs

Firm Manulal-Jagarnath Prasad

RESPONDENT

Date of Decision : 19-01-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38, 42

Citation : 93 Ind. Cas. 257

Hon'ble Judges : Kulwant Sahay, J;Jwala Prasad, J

Bench : Division Bench

Judgement

1. The opposite party obtained a decree against the petitioner on the 10th March 1923 from the Court of the Additional Subordinate Judge of Benares. The decree directed that the defendant do deliver to the plaintiff 31/2 per cent. Government Promissory Notes of the face value of Rs. 2,000 with interest upon the face value amounting to Rs. 360 within a month from the date of the decree, failing which the decree-holder would be entitled to recover from the judgment-debtor Rs. 1,630 plus costs of the suit Rs. 287-8-0. The Government Promissory Notes were not delivered nor was the amount mentioned above paid. The decree-holder, therefore, obtained an order transferring the decree from the Benares Court to the Court at Champaran with a certificate as required under Sections 38 to 42 read, with Order XXI, Rules. 3 to 9 of the C. P.C. That certificate stated that the amount due to the decree-holder on the date of the certificate was Rs. 2,281-12-0 with costs of Rs. 4 odd for obtaining the certificate. The decree was consequently being executed by the Subordinate Judge of Motihari The judgment-debtor objected to the execution of the decree and the amount for which the execution was levied, upon the ground that the decree did not allow to the decree-holder more than Rs. 1,630 plus costs Rs. 2,87-8-0 and that, the amount of Rs. 281 odd, etc., mentioned in the certificate was wrong. He further objected to the charge of interest in execution of the decree as being contrary to the terms of the decree These objections were disallowed by the Subordinate Judge on the 10th September 1923, holding that the proper Court for giving relief to the judgment-debtor was the Benares, Court. On merits the Subordinate Judge

accepted the interpretation of the decree in accordance with the contention of the judgment-debtor holding that the decree-holder was not entitled to more than Rs. 1,630 plus Rs. 287-8-0 as costs. He gave two weeks time to the judgment-debtor to apply to the Benares Court. On the 12th September 1923 the judgment-debtor put in another petition stating that the decree-holder was not entitled to charge further interest after the issue of the certificate. In this petition he also reiterated all the objections embodied in his first petition as regards the inaccuracy in the amount mentioned in the certificate. This was rejected on the 15th September 1923 by the Subordinate Judge on the ground that his former order of the 10th September 1923 operated as *res judicata*.

2. The matter was then taken to the District Judge in appeal, who by his order of the 28th January 1924 set aside the order of the Subordinate Judge holding that the objection as to further interest after the date of the certificate was not covered by the previous order of the Subordinate Judge, dated the 10th September 1923. He also observed that the objection as to further interest was taken in the previous objection, of the judgment-debtor.

3. As regards the objection as to the amounts mentioned in the certificate, the District Judge observed that the Subordinate Judge rightly directed that the petitioner should have gone to the Benares Court.

4. The case was then remanded to the Subordinate Judge for determination of the judgment-debtor's objection of the 12th September 1923 as to further interest. The record was received by the Subordinate Judge on the 8th February 1924, and he directed that information of this be given to the Pleaders, fixing the 23rd February 1924. On the latter date the Subordinate Judge noted that both parties were absent, but at the request of the Pleaders of the parties the case was adjourned to 8th March 1924. On the 8th March 1924 the Subordinate Judge passed the following order:

The parties are absent on call. Then Babu Rajeshari Prasad, Pleader, states he appears for the decree-holder. The judgment-debtor does not appear on call. His Pleader Babu Jagarnath stated that the client must be called out. As the judgment-debtor does not appear this objection is dismissed for default as he did not appear on the previous date too. The judgment-debtor has filed a petition for time on the ground that Nand Lai Banerjee, his Pleader has gone to Benares. This is frivolous as it is quite uncertain when the latter Pleader would return or would give up the practice altogether.

5. There can hardly be any doubt that the order is illegal and the learned Subordinate Judge refused to exercise jurisdiction vested in him by law.

6. The record was received by the Subordinate Judge of Motihari on the 8th February 1924 in the absence of the parties and the Pleaders were informed. On the 23rd February 1924 the parties were absent and at the request of the Pleaders present, the case was adjourned to 8th March 1924. The order sheet is signed only by Mr. Rajeshari Prasad. He is not the judgment debtor's Pleader. The

judgment-debtor's Pleader was Mr. Nand Lal Banerjee and probably Babu Jagarnath. But the order-sheet does not appear to have been signed by any of them. On the 8th March, when the case was disposed of, the Subordinate Judge noted that the parties were absent and the judgment-debtor's Pleader, Mr. Nand Lal Banerjee, was also away to Benares. Babu Jagarnath Prasad, on behalf of the judgment-debtor accordingly filed a petition for an adjournment of the case. The learned Subordinate Judge refused it. In the circumstances of the case he could not refuse the application, for it does not appear that any information of the date fixed was communicated either to the judgment-debtor or his Pleader. The form of the order-sheet, as pointed out in several cases, especially requires that signatures of the parties or their Pleaders should be taken on the order-sheet in token of the information of the order having been communicated to them. The statement in the order-sheet, that the case was adjourned at the request of the Pleaders, does not necessarily imply that they actually came to know of the date fixed. If the signatures of the parties or their Pleaders had been taken on the order-sheet there would have been no room for such a contention. I, therefore, hold that the order was passed without any information to the judgment-debtor and consequently the order cannot be sustained and his objection remains undisposed of.

7. The learned Subordinate Judge was fully cognizant of the case, and upon merits he ought to have held that the decree-holder was not entitled to levy execution for an amount in excess of what was allowed to him by the decree. Suppose for the sake of argument that the parties were absent,, yet it was the duty of the Subordinate Judge to see that in ex parte execution even the decree-holder does not realise more than, what the decree allowed him. In the present case there was no order, as to interest; either prior to or after the decree was passed. There was nothing mentioned in the certificate as to future interest. Therefore, on the face of the decree and the certificate, the decree-holder was not entitled to charge future interest. The learned Subordinate Judge has himself held on the previous occasion that the decree-holder was not entitled to more than Rs. 1,630 plus Rs. 2874, Therefore, he ought not to have allowed future interest whether the judgment-debtor did or did not appear before him. In this view also the order of the Subordinate Judge is wrong.

8. The learned Subordinate Judge is also wrong, and so is the learned District Judge, in holding that although under the decree the decree-holder was not entitled to more than Rs. 1,630 plus Rs. 287-8-0 the judgment-debtor ought to have gone to the Benares Court for his relief as to the interest charged by the decree-holder in execution, and to have got the certificate amended. The Court was executing the decree, and not the certificate, and the Executing Court at Motihari was competent to construe the decree. Order XXI, Rule 6, Clause (b) runs as follows "The Court sending a decree for execution shall send a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained

and what part of the decree remains unsatisfied." Under it, where no satisfaction of the decree has been obtained, the certificate is to state that "satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed." Under it the Court has not to state the amount due under the decree or the relief to which the decree-holder is entitled. The decree will be the guide in these matters for the Executing Court. Under the latter part of the clause referred to above: "Where the decree has been executed in part," the Court has to state the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied. This does not apply to the present case as no part of the decree was realized in the Court which transferred the decree. u/s 42 read with Order XXI, Rule 9 of the C. P.C. the Court to which the decree is transferred for execution has the same powers in executing the decree "as if it had been passed by itself." Thus the Court at Motihari, to which the decree was transmitted for execution, was competent to decide the objection of the judgment-debtor that the decree-holder was not entitled to get more than Rs. 1,630 plus Rs. 287-8-0. The learned Subordinate Judge was wrong in holding that the judgment-debtor ought to have gone to the Benares Court for the reliefs he sought. Therefore, the order passed by the learned Subordinate Judge and so also by the learned District Judge, that the judgment-debtor should have gone to the Benares Court for the reliefs sought by him, amounts to a refusal to exercise the jurisdiction vested in them by law. The order is ultra vires; and it cannot operate as res judicata, for the second application of the judgment-debtor, dated the 12th September 1923, wherein he reiterated his objection was in the course of the same execution which was yet pending and not disposed of. In this view of the case the learned Subordinate Judge is wrong in executing the decree for a sum: in excess of what the decree allowed to the decree-holder, namely, Rs. 1,630 plus Rs. 287-8-0. The Court was bound to construe the decree and in giving effect to the certificate of the Benares Court as against the express terms of the decree was going behind the decree which is not cognizable by law. Therefore, the orders of the Subordinate Judge, dated 10th and 15th September 1923 and 8th March 1924, are all wrong and without jurisdiction. The decree-holder is entitled only to the aforesaid sum, and the learned Subordinate Judge -is wrong in executing the decree for a higher sum, that is, for the interest prior to or after the decree or certificate. These orders will be vacated.

9. It has been brought to light that the property of the judgment-debtor has been sold for a sum in excess of the amount in "the decree and the sale has fetched a price much more than the amount of the decree. This order would affect the sale and would entitle the decree-holder to execute the decree afresh. In order to avoid further harassment and expense in connection with this small decree the parties have now come to terms that the sale should stand and the decree-holder will pay in cash to the judgment-debtor Rs. 400 within two months from this date (19th January 1925), failing which the judgment-debtor will be entitled to execute this order as a decree. There will be no order as to costs of

this application.

10. The result is that the judgment-debtor will be entitled to get Rs. 400 from the decree holder within two months, failing which this order will be executed by the judgment-debtor as a decree.