
(1941) 02 BOM CK 0001

In the Bombay High Court

Case No : Letters Patent Appeal No. 20 of 1940

Harilal Pannalal Sarda

APPELLANT

Vs

Vishnu Ramchandra Kallol

RESPONDENT

Date of Decision : 27-02-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16

Citation : (1941) 43 BOMLR 724

Hon'ble Judges : Macklin, J; John Beaumont, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Beaumont, C.J.—This is an appeal under the Letters Patent from a decision of Mr. Justice Divatia, and it raises an interesting question of law.

2. On February 1, 1932, a mortgage decree was passed in favour of one Hari Narayan against the respondents. The decree directed payment to the plaintiff of a sum of Rs. 13,000 by certain instalments, and then provided:

In case defendants fail to pay any two instalments, plaintiff do recover the whole of the amount by getting the below-mentioned mortgaged properties sold.

3. So that it is not an ordinary preliminary decree directing that if the plaintiff is not paid, he may apply for an order for sale; the order directs that the plaintiff may get the properties sold, if he is not paid. In 1936 Hari Narayan was declared an insolvent by a Court of the Miraj State, that is to say, by a foreign Court, and a person styled a "Receiver", who is the present appellant, was appointed. The appellant then applied in his own name to execute the decree of 1932 by sale of the mortgaged property, there having been default in payment of two instalments. The learned Subordinate Judge, before whom the matter came, held that the appellant was not entitled to execute the decree being a receiver appointed by a foreign Court, and in appeal Mr. Justice Divatia agreed with that view. The question before us is whether that is the right view.

4. Now, under Order XXI, Rule 16, Civil Procedure Code, 1908, it is provided that where a decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it. I apprehend that the expression "by operation of law" means by operation of the appropriate law, and the real question is whether the appropriate law, which in this case is the law of the Miraj State, is one which this Court can recognize as operating to transfer the decree.

5. In my opinion the general rule is well established that Courts in England or British India will recognize a process of universal distribution of a person's moveable property under the law of a foreign country. That principle was recognized by the House of Lords in *Galbraith v. Grimshaw* [1910] A.C. 508. and adopted by the Privy Council in *Gummidelli Anantapadmanabhaswami Vs. The Official Receiver of Secunderabad*, It is clear that no Court will recognize the transfer of Immovable property situate within its own jurisdiction by the operation of a foreign system of law. The title to Immovable property is always governed by the *lex loci*.

6. The question is whether the transfer of this decree which operates upon Immovable property in the Province of Bombay can be transferred by the operation of any system of law other than that of the country where the Immovable property is situate. No doubt, a decree is generally moveable property, but this decree is a document of title affecting Immovable property. The title of a purchaser will have to be made under this decree, and his title might be challenged on the ground that the person who got the decree executed was not the proper party to do so. It seems to me that it would be contrary to the principles on which this Court acts to hold that the title to Immovable property within this Province depends on the hazard of a correct appreciation of some foreign system of law. We are told that the Miraj State has adopted a system of insolvency law similar to that which prevails in British India outside Presidency towns, and no doubt the law of the State can easily be ascertained. But some systems of insolvency law might be very difficult to ascertain. One might easily have conflicting expert opinions on one side and the other. The nature of a foreign law is a question of fact to be proved by experts, and I think it would be wrong in principle to allow title to land in this country to depend on the state of some foreign law.

7. In my opinion, therefore, the lower Court and Mr. Justice Divatia were right in holding that the title of the receiver appointed by the Miraj Court to execute this decree cannot be recognized. As Mr. Justice Divatia pointed out, there is no difficulty in his enforcing the decree. He can obtain from the insolvent an assignment of such interest in the decree as the insolvent possesses in British India, and I apprehend that if he were unwilling to make such assignment, the insolvency Court in Miraj could force him to do so. However, that is not a matter which concerns us.

8. I think the decision of Mr. Justice Divatia was right, and the appeal must be

dismissed with costs.

Macklin, J.

9. I agree.