
(1956) 09 RAJ CK 0009
In the Rajasthan High Court
Case No : Second Appeal No. 25 of 1956

Isharchand and Others

APPELLANT

Vs

Rawat and Another

RESPONDENT

Date of Decision : 06-09-1956

Acts Referred:

Limitation Act, 1908 — Section 182(5)

Citation : AIR 1957 Raj 341 : (1958) RLW 109

Hon'ble Judges : Dave, J

Bench : Single Bench

Advocate : Dashrathmal, for the Appellant;

Final Decision : Dismissed

Judgement

Dave, J.

(1) This is a second appeal by the decree-holders whose application for execution of their decree has been dismissed by both the courts below on the ground of limitation.

(2) The facts which are not in dispute may be stated briefly in order to understand as to how the question of limitation has arisen. The appellants got a decree on 27th of May 1942. They presented their first application for execution on 7th of April 1943.

The decree was against one Sukha; but Sukha, having died, the application was made against his legal representatives Rawat and Birbal and satisfaction of the decree was prayed by the arrest of these two persons. It appears that no process was issued against Rawat and Birbal because the appellants failed to pay the process fee and ultimately their application for execution was consigned to record on 30th of June, 1948.

(3) On 16th of November 1950 the appellants presented second application for execution. It was also on the same pattern as the first application and that too

was consigned to record on 19th of December. 1950.

(4) Then the appellants presented a third application on 15th of October 1952 and again the appellants wanted satisfaction of the decree by arrest of Rawat and Birbal and their detention in Civil jail. This time, an objection was raised by the respondents that the application for execution against them was time-barred.

The executing court found that the previous two applications presented by the appellants were not in accordance with law since the legal representatives of the original judgment-debtor could not be arrested and sent to the civil jail; that for this reason, the previous applications could not be taken to be proper steps in aid of execution and the third application was therefore time-barred. Being aggrieved by this judgment, the decree-holders went in appeal to the District Judge, Ganganagar, but got no success and hence, they have preferred this second appeal.

(5) It is conceded by learned counsel for the appellants that if the first two applications dated 7th April 1943 and 16th November, 1950 are not held to be proper steps in aid of execution, then the third application would be time-barred. But learned counsel has tried to urge that the first two applications referred above should not have been held to be not in accordance with law simply because the appellants had made a wrong prayer for the satisfaction of their decree.

In support of his contention, learned counsel has referred to *Ramchandra Naidu v. Tirupathi Naidu*, AIR 1917 Mad 623 (A). In that case, the decree-holder has sought to save limitation by treating as steps-in-aid of execution two previous petitions in which he had prayed for the arrest of the judgment-debtors in spite of the fact that the decree to be executed did not make them personally liable.

It was held by the learned Judges, relying on earlier cases, that an execution petition may give a fresh starting point of limitation even though the relief asked for is not allowed by the decree sought to be executed." This case certainly is in favour of the appellants, but this view has not been followed in other High Courts.

In the case of *Nanjunda Chetty Vs. Y.P.R.L.M.L. Lakshmanan Chettiar and Others*, a similar point came up before a learned single Judge of that very Court and it appears from that judgment that the learned Judge of the same Court was doubtful of the correctness of this view, but he followed it with the observation that he was bound by a Bench decision of that Court.

It may be pointed out that in the case of *Firm Johar Mal-Paran Ram Vs. Bindeswari Prasad Singh and Others*, it was held that where the decree is only against the father and it provides that the loan incurred by the father is not binding on the son, and in spite of this the decree-holder applies for execution of the decree by the arrest of the son, the application so made for execution is not one in accordance with law inasmuch as the Court is not competent to grant the relief prayed for by virtue of the decree. Similarly, in the case of *L. Bhola Nath*

Vs. Parmeshwari Dayal, it was observed that

"there may be circumstances in which a person against whom a decree has been passed quoad the assets of a deceased person in his hands may become liable to arrest, but where no such circumstances are stated in the application, then on the face of it, it is not an application which the Court was competent to execute."

Such an application was therefore held not to be in accordance with law. Again, in the case of Mt. Mojibunisa Bibi and Others Vs. Kadir Bux, It was observed that an application for execution which contains a prayer which the court has no jurisdiction to grant is not in accordance with law. I respectfully agree with the view taken in the Patna and Allahabad cases referred above.

In the present case also, the decree was against Sukha and therefore Rawat and Birbal could not be ordered to be arrested by the executing court. It had no jurisdiction to order their arrest unless it was shown in the application that they had become personally liable for the satisfaction of the decree on account of certain reasons.

No such reasons were admittedly given by the appellants in their previous applications and the court therefore could have no jurisdiction to grant the relief asked for by the appellants. Under the circumstances, it cannot be held that those applications were in accordance with law. The decision of the courts below is correct. The appeal is dismissed.