

(1960) 12 PAT CK 0005
In the Patna High Court
Case No : A.F.A.O. No. 281 of 1960

Jagarnath Prasad Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 15-12-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 82(1), 82(2)

Citation : AIR 1961 Patna 271

Hon'ble Judges : N.L. Untwalia, J

Bench : Single Bench

Advocate : S. Anwar Ahmad, for the Appellant; Ram Nandan Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Untwalia, J.—This is a miscellaneous second appeal by the decree-holder, who obtained a decree for money against the respondent, the State of Bihar. The decree was obtained on 18-9-1954. He executed the decree after the dismissal of the appeal of the State of Bihar by the lower appellate court and got certain properties sold. Neither any time was specified in the decree for its satisfaction, nor was any report of non-satisfaction made in the case for the orders of the State Government. The State of Bihar filed an application for setting aside the sale.

By an amendment, an additional ground was taken that the decree was not executable, and the court had no jurisdiction to execute the decree, because the requirements of Section 82, CPC were not complied with, and, therefore, the sale was void. The two courts below have accepted this objection put forward on behalf of the State and have held the sale to be void.

2. Mr. Anwar Alimad, appearing in support of this appeal, submitted that in view of the amendment made in Section 82 of the CPC by Act 66 of 1956, the view taken by the earlier cases that the decree could not be executed for non-

compliance of that section, does not hold good now, or, in any event, the sale, held without complying, with the requirements of Section 82, cannot be said to be void; it may be voidable. In my opinion, there is no substance in either of the contentions. Sub-sections (1) and (2) of Section 82, before they were amended by Act 66 of 1956, read as follows:

"82, (1) where in a suit by or against the Government, or by or against a public officer in respect of any such act as aforesaid a decree is passed against the Union of India or a State or, as the Case may be, the public officer, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the court shall report the case for the orders of the State Government.

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report".

No amendment has been made in the wording of Sub-section (2), Sub-section (1), after the amendment, reads thus:

"Where in a suit by or against the Government, or by or against a public officer in respect of any such act as aforesaid, a decree is passed against the Union of India or a State or, as the case may be, the public officer a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified or within three months from the date of the decree, where no time is so specified, the court shall report the case for the orders of the State Government".

In my opinion, the only change, brought about by the amendment, is that formerly a time limit had to be specified for the satisfaction of the decree against the Government and others mentioned in Section 82, but after the amendment a time limit may be specified; if it is not so specified, the time limit for the satisfaction is three months from the date of the decree. In either event, if the decree is not satisfied either within the time so specified or within three months of the decree, the court has got to report the case for the orders of the State Government.

There is no change in law even after the amendment brought about by Act 66 of 1956 in so far as the obligation on the court to report the case for the orders of the State Government is concerned. It is, therefore, clear to me that, in view of Sub-section (2), which is unaltered execution cannot be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report. If no report has been made, it cannot be said that the decree has remained unsatisfied for the period of three months, and in that event, execution cannot be issued at all. If it is issued, the entire proceedings in execution are without jurisdiction and void and the sale held in such an execution is obviously void.

3. Three cases have been cited before me which, of course, were decided before coining into force of the Amending Act 66 of 1956. The Patna case, which is also noticed in the judgment of the lower appellate court, is Governor-General of India in Governor-General in Council Vs. Piramal Marwari, . This has been followed by two Bench decisions, one of the Calcutta High Court in Dominion of India Vs. Gosto Behary Kundu, and the other of the Allahabad High Court in the The U.P. Government Vs. Firm Brij Mohan Lal, .

In all these cases it has been decided that if no time limit is specified in the decree for satisfaction, the decree may not be void but is incomplete and if no report is sent of non-satisfaction of the decree within the time limit, the decree is inexecutable. In so far as the decision on the first point is concerned, it cannot be said now after the amendment brought about by the Act of 1956 that the decree will be incomplete if no time is specified for its satisfaction. The second point decided by those cases is still good law and I respectfully agree with it. I, therefore, hold that there is no merit in this appeal. It is, accordingly, dismissed with costs.