
(1923) 08 PAT CK 0021
In the Patna High Court

Jagdeo Nath Sah Deo

APPELLANT

Vs

Maharaja Pratap Udainath Sah Deo

RESPONDENT

Date of Decision : 16-08-1923

Acts Referred:

Contract Act, 1872 — Section 43

Citation : AIR 1924 Patna 339

Hon'ble Judges : Mullick, J; Bucknill, J

Bench : Full Bench

Judgement

Mullick, J.—On the 6th May 1919 the Maharaja of Chota Nagpur obtained an ex-parte decree for arrears of rent against five persons, namely, Jagdeo Nath Sah Deo, Kuldeo Nath Sah Deo, Kirpal Nath Sah Deo, Baldeo Nath Sah Deo and Ambika Prasad. Execution was taken out on the 11th of March 1922, and on the 15th of May 1922 Jagdeo Nath Sah Deo objected to the sale on the ground that two of the judgment-debtors, namely, Kirpal Nath Sah Deo and Baldeo Nath Sah Deo had died long before the institution of the suit. In consequence of that objection the heirs of these two judgment-debtors were at the instance of the decree-holder added as parties to the execution proceedings but eventually the Deputy Collector who was the Execution Officer rejected the objection and caused the defaulting tenure to be sold. The auction purchaser was a party other than the decree holder, and the sale was duly confirmed. The judgment-debtor, Jagdeo Nath Sah Deo, then appealed to the District Judge, but without success, and the present second appeal is filed against the District Judge's order of the 19th of March, 1923.

2. Now, no objection was preferred in the execution proceedings by the heirs of the deceased defendants, and the question is whether in those proceedings the judgment debtor, Jagdeo Nath Sah Deo was competent to raise the objection that the decree was a nullity on the ground that it was made against two dead persons. In my opinion, it is not necessary that, in order to enable the legal representative of a deceased defendant to take the objection that the decree is a

nullity on the ground that the defendant was dead at the time when the decree was made, the deceased defendant should have been the sole defendant in the suit. There is authority for the proposition that such an objection can be taken by any of the surviving defendants. *Imam-ud-din v. Sadarath Rai* [1910] 32 All. 301 is authority in support of this view. The next question is whether the decree was in fact a nullity in this case. It is true that the lower Appellate Court has not investigated the truth of the allegation whether the defendants Kirpal Nath Sah Deo and Baldeo Nath Sah Deo were dead at the time of the decree, but that omission is immaterial. Assuming that the allegation is correct, the appellant cannot succeed unless he can show that the decree is incapable of execution against him and the other two surviving judgment-debtors. Now, it has been found as a fact that the heirs of the deceased never attempted to have their names registered in the office of the landlord, who under the law is not bound to sue any one who is not on his register. The suit, therefore, would seem to have been properly constituted. It has been contended in support of the District Judge's decree that u/s 43 of the Indian Contract Act the decree holder would be entitled to a money decree against any one of the co-tenants, and reliance is placed upon *Krishna Das Roy v. Kali Tara Chowdhuri* 22 C.W.N. 289 but to render Section 43 of the Indian Contract Act applicable the terms of the contract must be investigated and it must be shown that there was a several liability as well as a joint liability. The appellant also points out that the family was a joint Mitakshara family and that the Revenue Officer was empowered only to try rent suits and that he was not competent to give a money decree.

3. It is, however, in my opinion, not necessary to rely upon Section 43 of the Indian Contract Act at all. The landlord was entitled to sue his recorded tenants, and the decree was on the face of it a good decree. The death of two of the defendants previous to the decree did not in any way affect the liability of the tenure, as the landlord had no notice; the objection of Jagdeo Nath Sah Deo was rightly rejected.

4. It is further to be observed that the property having been purchased by a third party the present appeal is infructuous and the sale could not be set aside.

5. The result is that the appeal is dismissed with costs.

Bucknill, J.

6. I agree.