

(1929) 12 CAL CK 0003
In the Calcutta High Court

Jahar Lal Saha

APPELLANT

Vs

Sm. Lalita Sundari Dasi and Another

RESPONDENT

Date of Decision : 10-12-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 1930 Cal 454

Hon'ble Judges : Rankin, C.J

Bench : Division Bench

Judgement

Rankin, C.J.—In my judgment, this Rule must be discharged. The order complained of is an order refusing rateable distribution u/s 73 of the Code to the applicant decree-holder in the following circumstances. It appears that the applicant obtained a money decree against one Narottam Dasi in respect of money which he had lent to Krishna Lal Mallik, her husband in his lifetime. Against the widow Narottam Dasi, he obtained his decree and, Narottam Dasi having died, the opposite party 1, Srimati Lalita Sundari Dasi was substituted as her legal representative in her place for purposes of execution in terms of Section 50, Civil P.C. It appears that the opposite party 2, Rajendra Nath Adhikari Mohanta got a rent decree in respect of certain homestead lands against Srimati Lalita Sundari Dasi. The lands in question appear not to be agricultural lands but lands on which there is a house and a tank within the municipal limits of Chinsura. A sale was held under each decree and the decree of the opposite party Rajendra Nath Adhikari was enforced first by sale. Thereupon, the present petitioner Jahar Lal Saha applied for rateable distribution and having been refused he applies to this Court u/s 115, Civil P.C.

2. The learned advocate for the opposite party has not attempted to support the reasoning of the Munsifi but he has pointed out that the undoubted requirement of Section 73 a requirement which must be satisfied before a person is entitled to rateable distribution is that the two decrees must have been passed against the same judgment-debtor. In this case, the petitioner's decree was passed against

Narottam Dasi (as a matter of fact, it was passed against her in respect of the debt of her husband Krishna Lal Mallik) whereas Rajendra Nath Adhikari's rent decree was passed against Srimati Lalita Sundari Dasi herself. It may or may not be that Srimati Lalita Sundari Dasi was wrongly made the legal representative of Srimati Narottam Dasi. I am not concerned with any question of that sort. It appears to me that the test is whether the two decrees were passed against the same person. An authority for that has been shown to me in the following cases. The first is a decision of Sir Lawrence Jenkins in the case of Govind Abaji v. Mohoniraj Vinayak [1901] 25 Bom. 494, where the plaintiff in one case obtained a money decree against Bhau Babaji. After the decree, his son Kashinath was placed on the record for purposes of execution. Another person Govind Abaji obtained a decree in a form which was improper but which was really held to be a decree against Kashinath, though it was a decree against him in respect of a claim which originally arose against Bhau Babaji in his lifetime. Treating the one as a decree passed against Bhau Babaji and the other as a decree passed against Kashinath, the Court held that it was not possible to say that these two money decrees were against the same judgment-debtor.

3. In the same way, the Madras High Court in the case of Srinivasa Aiyangar v. Kanthimathi Ammal [1910] 33 Mad. 465, followed the ruling of the Bombay High Court above referred to. A obtained a decree against one person and then B obtained a decree against that person's legal representatives. It was held that the case was not within the requirements of what is now Section 73, Civil P.C. It has been pointed out that, in the case of Hart v. Tara Prosanna Mukherji [1885] 11 Cal. 718, there were certain observations made by this Court in 1885 in respect of the Code of 1882 which may be thought to go against the rulings which I have just cited. In that case, it appears that there were two brothers and one of them died. The plaintiff obtained a decree against one and the widow of the other for the amount of interest and costs due on a mortgage and it was provided in the decree that he was to get the money from the mortgaged properties and from the defendants personally. The defendant also obtained a decree against the same two people, the brother and the widow of the other brother for a certain sum of money and costs. In these circumstances, a contention was raised that decrees against a defendant personally and against the same defendant in a representative capacity were not decrees "against the same judgment-debtor." The Court did not think it necessary to decide the point but intimated that it was inclined to decide that the decrees against the defendant personally and against the same defendant in a representative capacity were decrees "against the same judgment-debtor" in other words, the decrees were against the same judgment-debtor, although they were against him in different capacities. That does not seem to me to be an authority which runs counter to the decisions which I have already quoted from the Madras and the Bombay High Courts. I express no opinion upon the point which was merely touched upon. The observation was not intended as a considered decision. It is sufficient for me to say that it in no way throws any doubt upon the doctrine of

the cases to which I have referred. It has been pointed out to me that the language of Section 73 of the Code of 1908 has been slightly varied from the language of the Code of 1882. Whereas the language of the Code of 1882 was "decree for money against the same judgment-debtor" the Code of 1908 says "passed against the same judgment-debtor." It has been pointed out in *Balmer Lawrie & Co. v. Jadu Nath Banerjee* [1915] 42 Cal. 1 :

It is essential for the application of the section that the decrees should have been passed against the same judgment-debtor. This has been made dear beyond possibility of dispute by the introduction of the word "passed" which did not find a place in Section 295 of the Code of 1882.

4. It appears to me, therefore, that the argument of the learned advocate for the opposite party must be given effect to and that the Rule must be discharged with costs, hearing fee 3 gold mohurs.