

(1927) 05 PAT CK 0026
In the Patna High Court

Jhakhri Gope

APPELLANT

Vs

Phagu Mahto and Others

RESPONDENT

Date of Decision : 17-05-1927

Acts Referred:

Citation : AIR 1927 Patna 329

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Full Bench

Judgement

Ross, J.—A decree for rent was passed in favour of three parsons jointly: Bhiku Mahto and his brother Phagu Mahto and Phagu's minor son Sidheswar Prasad under the guardianship of his father. The sum due under the decree was paid by the judgment-debtor to Bhiku who was admittedly the karta of that family. A satisfaction petition was filed by Bhiku and satisfaction was entered in the register by the Munsif. Then Phagu and his son Sidheswar proceeded to execute the decree for their half share. The judgment debtor pleaded satisfaction. The learned Munsif held that the decree had been satisfied; that Bhiku had full authority as karta of the family to receive the money; and that, even if there had been subsequent separation, this would not affect the judgment-debtor who had no information of it. The learned District Judge reversed the decision of the Munsif. He held that it was not necessary for him to go into the question of the separation of the decree-holders subsequent to the date of the decree, because, in his opinion, the appeal succeeded on another ground, namely that the leave of the Court had not been taken to the payment as required by Order 32, Rule 6, Order 32, Rule 6, requires the leave of the Court before a next friend or guardian for the suit receives money on behalf of a minor. But here the payment was not made to the minor's guardian Phagu Mahto, but to Bhiku Mahto, the karta of the family. Consequently Order 32, Rule 6 has no application.

3. It was contended, however, on behalf of the respondents that if a payment to Phagu without leave would have been bad, still more would a payment to Bhiku without obtaining the leave of the Court. No authority for this proposition was

given; and there is no ground on principle why it should be so. The karta of the family has full authority to act for the family and I see no reason why the leave of the Court should be obtained before a payment is made to him merely because a minor member of the family is concerned. The object of Order 32, Rule 6 is quite, different. Then the Court is responsible for payment to the next friend or guardian of the minor whom it has appointed and it must control his acts, in the interest of the minor.

4. It was further argued on behalf of the respondents that the power of the karta ceased to operate as soon as he made the other members of the family parties. It is open to the karta to bring a suit in his own name or to join the other members of the family, but the fact that he has joined the other members does not necessarily derogate from his powers as karta.

5. Finally it was argued that, in any case, there must be a remand because" the learned District Judge has not dealt with the question of the separation between the decree holders. Now, that separation was alleged to have taken place subsequently to the date of the decree. It would not affect the judgment-debtor who was entitled to make payment to any one of the joint decree holder. Under Order 21, Rule 15 any one of joint decree holders can execute the whole decree.

6. Consequently the judgment debtor was entitled, as the decree was a joint decree, to look for a valid discharge to any one of the joint decree holders who executed the decree.

7. In my opinion this appeal must be allowed and the decision of the learned District Judge set aside and that of the Munsif restored. The appellant is entitled to his costs here and in the Courts below.

Kulwant Sahay, J.

I agree.