

(1940) 07 CAL CK 0015
In the Calcutta High Court

Jnanendra Narayan Bagchi and Others	APPELLANT
Vs	
Bhola Nath Mondal and Others	RESPONDENT

Date of Decision : 08-07-1940

Acts Referred:

Citation : AIR 1941 Cal 252

Hon'ble Judges : Derbyshire, C.J;B.K. Mukherjea, J

Bench : Full Bench

Judgement

B.K. Mukherjea, J.—These two appeals arise out of certain proceedings in execution of two rent decrees which were obtained by the same decree-holders against the same judgment-debtors. The rent suits were instituted in the year 1929 and decrees were obtained by the appellants decree-holders for sums of Rs. 9000 odd and Rs. 13,000 odd respectively. In the present execution proceedings objections were raised by some of the judgment-debtors and these objections were of a twofold character. In the first place it was contended that there was an arrangement between the decree-holders and the judgment-debtors which had the effect of an adjustment of the decree within the meaning of Order 21, Rule 2, Civil P.C. In the second place it was argued that by reason of a compromise petition which was filed in this Court in connexion with appeal from Original Decree No. 178 of 1931, the decretal dues were payable in six yearly instalments and consequently the decree-holders were not entitled to take out execution for the whole amount. The executing Court has given effect to both these contentions urged on behalf of the judgment-debtors and has dismissed the applications for execution. It is against these two orders that these appeals have been preferred.

2. On bearing the learned advocates on both sides we are of the opinion that the decision of the Court below is wrong and cannot be sustained. So far as the first point is concerned, the case of the objecting judgment-debtors rests really upon a registered deed which is marked Ex. A in this case and which according to them embodies the terms of adjustment between the parties. The document has

been read out to us by the learned advocate appearing for the appellants. It purports to be a deed of appointment of a manager in respect of the share of the 11 annas judgment-debtors in the tenure in arrears. One Fakir Chandra Bagchi, who was one of the decree-holders and has since died, was, by this instrument, appointed a manager of the interest of the 11 annas judgment-debtors and he was to manage the property on their behalf. There are detailed provisions in this deed of appointment as to how the property was to be managed and how after meeting the collection expenses, paying out commissions to the manager and the current rents due in respect of the tenure, the surplus that remained were to be distributed. To this document the other decree-holders as well as the remaining judgment-debtors were no parties. It is conceded on behalf of the respondents that the other judgment-debtors who were no parties to this instrument could not possibly be bound by it. But it is argued that so far as the other decree-holders are concerned they having taken benefit under this instrument were estopped from disputing its validity. As I have said above the document does not purport to be a deed of adjustment at all and says nothing from which we can infer that the decree was adjusted in any way within the meaning of O.21, Rule 2, Civil P.C. It may have contained certain arrangements between the parties as regards the payment of the decretal dues that were due under these two rent decrees, but from the simple fact that the other decree-holders were paid some portion of the rents that subsequently fell due we are unable to say that they became impliedly parties to the instrument and it could not be presumed that they expressly or impliedly authorized Fakir Chandra Bagchi to enter into any such agreement with the judgment-debtors on behalf of them all. That being the position we are of the opinion that Ex. A does not stand in the way of the decree-holders seeking to execute their decrees.

3. As regards the other ground it appears that there was an appeal taken to this Court by the judgment-debtors not against the actual decision in the rent suits, but against certain observations made by the trial Judge as regards the way in which rents are to be paid in future. There was a compromise petition put in this Court and one of the terms of the compromise was that the amount payable under the rent decrees would be paid off in six yearly instalments. It was also stated that the terms relating to the payment of the instalments mentioned above would be embodied in a separate petition to be filed in the execution proceedings in the Court of the subordinate Judge at Suri It is admitted on both sides that no such separate petition was filed before the executing Court and we do not know the terms according to which these instalments were to be paid. It appears from the records that this objection was taken in an earlier execution proceeding, but it was overruled by the executing Court. The decree-holders have mentioned -this petition of compromise in their application for execution and have stated also that no instalment had been paid in accordance with the same. Under these circumstances we are of the opinion that there was no concluded agreement between the parties as regards the payment of the decretal dues by instalments and if as a matter of fact none of the instalments

were paid by the judgment-debtors the decree-holders are at liberty to execute the decree. The learned advocates who appear on behalf of the respondents also do not press this point.

4. The result therefore is that the appeals are allowed, the orders passed by the executing Court in both the miscellaneous proceedings are set aside and the cases are remitted to the executing Court in order that the decree-holders might be allowed to proceed with the execution of the decrees. It has been brought to our notice by Mr. Hari Prosanna Mukherjee who appears on behalf of the 11 annas judgment-debtors that the account books filed by Fakir Chandra Bagchi have actually been produced before the Court and on a proper investigation of these accounts it will be found that a considerable sum of money has been paid on their behalf. The executing Court will certainly go into these accounts and will give credit to the judgment-debtors for any sums that might have been paid on their behalf as disclosed by these accounts.

5. Respondent 9 Ka, Tarak Brahma Roy, is represented in this Court by Mr. Chandra Sekhar Sen. We are of the opinion that as he was a purchaser of an eight annas share of the mahal pending the hearing of the rent suits he is not personally liable for any amount of the rent; and if the patni and the darpatni have already been sold at the instance of the superior landlord he cannot be made personally liable. The appeals are therefore allowed and the cases remitted to the Court below to be dealt with according to law. The appellants are entitled to their costs in these appeals-the hearing fee being assessed at one gold mohur in each appeal.

Derbyshire, C.J.

6. I agree.