

(1940) 11 PAT CK 0002
In the Patna High Court

Joyram Narayan and Another

APPELLANT

Vs

Shiva Prasad Singh and Another

RESPONDENT

Date of Decision : 20-11-1940

Acts Referred:

Citation : AIR 1941 Patna 416

Hon'ble Judges : Harries, C.J.;Manohar Lall, J

Bench : Full Bench

Judgement

Harries, C.J.—This is a defendants' appeal from a decree of the learned Subordinate Judge of Dhanbad dated 18th December 1937.

2. The plaintiff, Raja Shiva Prasad Singh, Raja of Jharia, brought a suit for royalty in the Court of the learned Subordinate Judge and impleaded in that suit the lessees of minerals and the sub-lessees. It appears that the lessees had hypothecated certain property to secure sums due by way of royalty, and plaintiff in his suit asked that the amount due for royalty should be recovered by sale of the properties hypothecated. The plaintiff succeeded in this suit and obtained a preliminary decree and later a final decree. The properties hypothecated were put to sale in execution of the decree, but the amount recovered by the sale did not prove sufficient to satisfy the whole decree. The Baja then applied under Order 34, Rule 6, Civil P.C., for a personal decree against all the defendants, namely, the lessees and the sub-lessees, and such personal decree was given to him by the learned Subordinate Judge.

3. The sub-lessees have preferred the present appeal and have contended that in no circumstances whatsoever could a personal decree be passed against them. The learned Subordinate Judge appears to have thought that as preliminary decree for sale was made not only against the lessees but also the sub-lessees a personal decree should also be passed against them.

4. The learned Subordinate Judge has, however, overlooked the fact that a mortgage decree was passed against the sub-lessees together with the lessees

because they were interested in the property sought to be sold. It is, however, perfectly clear that no personal decree can be obtained against the sub-lessees merely because they are interested in the property. They were in no way personally liable to the plaintiff and, therefore, a personal decree should not have been passed against them.

5. Counsel representing the plaintiff has made it clear that he does not contest this appeal, but he has asked that no costs should be awarded against his client. It cannot be overlooked, however, that the plaintiff asked for this personal decree against the present appellants, though clearly he was not entitled to do so.

6. The lower Court was clearly mistaken; but the lower Court acted on the invitation of the plaintiff. Had the plaintiff not asked for such a decree, the need for this appeal would never have arisen. The fact that the Court passed the decree at the invitation of the plaintiff respondent has compelled the present appellants to bring these proceedings and to incur costs in order to have the matter rectified. That being so, it would be inequitable to make the present defendant, appellants, who are clearly right, liable to pay the whole of the costs of this appeal.

7. However, as the plaintiff-respondent has not contested the appeal, this is clearly a case where the full hearing fee should not be granted.

8. For the reasons which I have given, I am satisfied that no personal decree should have been passed against defendant-appellants, the sub-lessees, and that being so, I would allow this appeal, set aside the decree of the Court below in so far as it affects the defendant-appellants and dismiss the claim against them. The defendant-appellants will have the costs in this Court and in the Court below, but I would assess the hearing fee in this Court at one hundred and fifty-rupees.

Manohar Lall J.

I agree.