

(1929) 02 PAT CK 0017
In the Patna High Court

Kailash Kinkar Narain Singh and Others	APPELLANT
Vs	
Dasrath Singh and Others	RESPONDENT

Date of Decision : 13-02-1929

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1929 Patna 232 : 119 Ind. Cas. 883

Hon'ble Judges : Fazl Ali, J; Das, J

Bench : Division Bench

Judgement

Das, J.—One Kamlapati Narain obtained certain decrees for arrears of rent against the respondents. Kamlapati died and the appellants who additively are the sons of Kamlapati applied for execution of the decrees. The applications were resisted by the respondents on the ground that Kamlapati left two other sons by another wife and that they were necessary parties to the execution proceedings. The Court of first instance declined to enter upon this question and allowed execution to proceed, The Appellate Court has come to the conclusion that it is necessary that the question raised by the respondents should be decided and that Court has remanded these cases to the Court of first instance. The applicants for execution appeal to this Court.

2. In my opinion, there is no doubt whatever that the decision of the learned District. Judge is right and must be affirmed. Ordinarily all the decree-holders in a joint decree must join in an application for execution of the decree. It is true that the decree was obtained only by Kamlapati but Kamlapati being dead his sons are in the position of joint decree-holders and they cannot be allowed to execute the decree if it be established to the satisfaction of the Court that there are other persons also entitled to execute the same decree. Upon the general rule just enunciated an exception has been engrafted and that exception is contained in Order XXI, Rule 15 of the Code which provides as follows:

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition

to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

3. Now, reading the rule and the exception together, it is quite clear that either all the decree-holders must join in the application for execution of the decree, or some of them may apply for the execution of the whole decree for the benefit of them all. Now, in this case the applicants for execution contend that they are the only sons of Kamlapati and are entitled to execute the decrees under the general rule. If this contention is made good, then there is no doubt that the respondents' case must fail. On the other hand, it is to be noted that there is no application before the Court under Order XXI, Rule 15, for the simple reason that those who are claiming to execute the decrees do not admit that Kamlapati left any other son behind him. Now if they make good their point, there is no doubt that they are entitled to execute the decrees under the general rule; but, in my opinion, it is obvious that the case raised by the respondents must be investigated. Mr. Khurshed Husnain contends before us that there is no provision of law under which that claim can be investigated and he refers us to the decision in the case of Chaudhry M. Yazirul Hassan Vs. Abdul Wahab Khan and Others, . All that that case laid down was that the question as to who are the legal representatives of a person cannot be decided in execution proceedings, Order XXI, Rule 15 having no application to execution proceedings. I do not dispute the proposition of law as laid down in that case, but there is sufficient power in the Court to investigate a question of this nature under s, 47, Clause (3) of the Code. It has been consistently held that Section 47 ought to receive a very wide interpretation; and it is obvious that the question raised by the respondents is not a technical one but one of substance, for if it should be held afterwards that Kamlapati left other sons, they are open to attack in a proceeding for execution by them. I am, therefore, of opinion that the question has been correctly decided by the Court below.

4. But in truth there is another answer to the question. The applicants for execution claim to execute the decrees and they claim that there is no other person interested in the decree. The respondents are entitled to show that there are other persons equally interested in the decrees. If the respondents make good their point, the application for execution must be refused on the short ground that the proper parties are not before the Court; but, on the other hand, if the applicants proceed under Order XXI, Rule 15, then there is no difficulty at all in the case. But they cannot proceed under Rule 15 unless they admit that there are other persons interested in the decrees. If an application is made under Rule 15 then the Court, of course, will take steps to protect the interests of the

absent decree-holders. This appeal as well as Appeals Nos. 141 and 142 fail and must be dismissed with costs.

5. Miscellaneous Appeal No. 143 is not pressed as that appeal is directed against an order of remand in the inherent jurisdiction of the Court. It is well-settled that an appeal does not lie from such an order of remand.

Fazl Ali, J.

6. I agree.