
(1948) 08 PAT CK 0002
In the Patna High Court

Kaluram Agarwalla

APPELLANT

Vs

Shayam Sunder and Others

RESPONDENT

Date of Decision : 09-08-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 51, 73

Citation : AIR 1949 Patna 128

Hon'ble Judges : Agarwala, C.J.;Narayan, J

Bench : Full Bench

Judgement

Narayan, J.

1.This appeal is directed against an order of the Subordinate Judge of Dhanbad refusing the prayer of this appellant for rateable distribution. The respondents, Shyamsunder Singh and others are the judgment-debtors, and it appears that several persons, including this appellant, have obtained decrees against them which have now been put under execution. In one execution case, namely, Execution case No. 547 of 1935, two pleaders practising at Dhanbad were appointed receivers under the provisions of Order 40, Civil P.C. and they were authorized to take possession of tautis Nos. 21 and 23 appertaining to Kismat 1/3 of Pandra excepting the property that had been sold in Execution case No. 153 of 1932, These receivers have been managing the properties of the judgment-debtors since their appointment, and it is said that by granting coal mining leases in respect of some coal mines in Mauza Baragoria, a property attached by the order of the Subordinate Judge of Dhanbad in Execution Case No. 256 of 1937 which is still pending, the judgment debtors have realised Rs. 60,000 as salami out of which Rs. 49,600 is still lying with the receiver. The present appellant along with certain other persons who have got decrees against the judgment-debtors applied for rateable distribution of these assets, but their applications were rejected by the Court below on the ground that the money in the hands of the receivers has not been received by the Court under a process of execution. In my opinion, the view taken by the learned Court below cannot be

supported. Even before the amendment of Section 73, Civil P.C., it had been held by the High Court of Calcutta in *Fink v. Maharaj Bahadoor Singh* 26 Cal. 772 that rents of property under attachment which have been realised by a receiver appointed at the instance of one decree-holder are assets realised by sale or otherwise in execution of a decree within the meaning of Section 295, Civil P.C. and that the appointment of a receiver by the Court at the instance of a judgment-creditor is a process of execution. According to the new Section 51, Civil P.C. the Court may, on the application of a decree-holder, order execution of a decree by appointing a receiver. This discretion is regulated by the provisions of Order 40 Rule 1, Civil P.C. and Clause (a) of that rule has been altered to allow the Court to appoint a receiver after decree. In this case, it is common ground that the receivers, who are holding the assets for the distribution of which this appellant has applied, were appointed in an execution case; and the judgment-debtors have stated in para 4 of their rejoinder petition that

The receivers in consequence of this application have been making payments out of the amount lying in their hands to such decree-holders who in consideration of the straitened financial position of the estate are agreeable to allow substantial remission out of their dues.

2. The receivers are thus admittedly making payments to some of the decree-holders, and it cannot be presumed that they are making these payments without obtaining the sanction of the Court. They having been appointed receivers in an execution proceeding and execution by appointing a receiver being one of the modes of execution sanctioned by law, there is no reason why the money in their hands should not be treated as "assets held by a Court." As was observed by Fazal Ali J. (as he then was) in *Satnarain Prasad Choudhury and Others Vs. Mahabir Prasad Choudhury and Others*,

It is obvious that by the use of these words the legislature has considerably enlarged the scope of the section and it is no longer permissible to hold that rateable distribution must be confined only to those cases where assets are realised by sale or by some other process of execution.

3. His Lordship further pointed out that the words of the new section are wide enough to cover not only the money which a judgment-debtor is compelled to pay, but also money voluntarily paid into Court by him to satisfy a decree under execution. In the case of *Bhatoo Singh v. Raja Raghunandan Prasad Singh* AIR 1933 pat. 803, a Division Bench of this Court held that money paid into Court for the benefit of a particular decree-holder under Order 21, Rule 89, Civil P.C. becomes assets in the hands of the Court within the meaning of Section 73 of the Code and is available for rateable distribution in the same way as any other money paid in for his benefit, whether realised by sale or paid in to avoid attachment.

4. We are, therefore, of opinion that the learned Subordinate Judge took an erroneous view of the law and wrongly rejected the application of this appellant

for rateable distribution. The appeal is allowed with costs of both the Courts. The appellant will have rateable distribution of the assets in the hands of the receivers.

Agarwala C.J.

5. I agree.