

(1915) 06 AHC CK 0015
In the Allahabad High Court

Kalyan Singh and Others

APPELLANT

Vs

Jagan Prasad

RESPONDENT

Date of Decision : 19-06-1915

Acts Referred:

Citation : AIR 1915 All 344(2) : (1915) ILR (All) 589 : 30 Ind. Cas. 523

Hon'ble Judges : Henry Richards, C.J.; Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Henry Richards, C.J. and Rafiq, J.—This appeal arises out of an application for execution. The original decree was for Rs. 20,200, with proportionate costs and future interest at 6 per cent, per annum. It is now admitted that under the terms of the decree the decree-holder was only entitled to interest on the principal sum and not upon the costs. From time to time the decree-holder applied for execution. In the account of what he alleged to be due to him he included interest not only on the decretal amount, but also on the costs. At last the situation was as follows : If the decree-holder was not to get interest on his costs the decree was more than satisfied. If on the other hand he was to get interest upon his costs there would still remain something due to him. The sole question which has to be decided in the appeal is whether or not the judgment-debtor having neglected to take exception to the inclusion in the account of interest on costs, he is now prevented from saying that the decree is satisfied. The principle which the decree-holder seeks to set up is that of *res judicata*. The law of *res judicata* appears in Section 11 of the Code of Civil Procedure. It provides that "no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and final by decided by such court." Explanation IV provides that "any matter

which might and ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit." It seems quite clear that the provisions of the Code as to res judicata are not expressly made applicable to execution proceedings. It is said, however, that there are numerous authorities in which the principle of res judicata has been applied to execution proceedings. No authority has been shown to us where it has been decided that if a judgment-debtor does not take exception to the amount set forth as being due in an application for execution, he is prevented by the rule of res judicata from ever afterwards raising the question. To hold that he would not only be applying the rule of res judicata in a way not provided - for by the Code, but would be also seriously extending the authorities cited. In the present case the question as to how far the decree remained unsatisfied was never raised or decided. It is only by calling to his aid explanation IV that the decree-holder can contend that the question has already been decided. The Judgment debtor had very little reason for taking exception to the earlier applications for execution. A large sum was then due on the decree, and he knew that his property must be attached and sold in order to realize what was beyond question due. The judgment-debtor could not well take exception to the application for execution without employing a pleader and incurring expense. When the decree was practically satisfied the question as to how much (if any) remained due for the first time became really important. If it is considered expedient (we do not say it is) to make all the provisions of Section 11 of the Code applicable to execution proceedings it should be done by Legislature and not by the judges. We think that the view taken by the learned Judge of this Court was correct and ought to be affirmed. We dismiss the appeal with costs.