
(1938) 11 CAL CK 0029
In the Calcutta High Court

Kanji Valji

APPELLANT

Vs

Kalidas Thakursay

RESPONDENT

Date of Decision : 18-11-1938

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1939 Cal 413

Judgement

1. The facts which give rise to this Rule are as follows : A firm styled Surja Singh Raghunath Singh got a decree against the B.N. Ry. Company in the Court of the Fourth Subordinate Judge of Alipur in Money Suit No. 63 of 1926 for about Rs. 2500. The judgment-debtor company deposited the amount in Court. One Narasingh Das Agarwalla obtained a decree against the Firm Surja Singh Raghu Nath Singh for money and attached a portion of the money deposited to the credit of the said firm by B.N. Ry. Company. Thereafter both Surja Singh Raghu Nath Singh and Narasingh Das Agarwalla applied for withdrawal of the money deposited. Thereupon the petitioner in this Court brought a suit in the Court of the Second Munsif at Alipur (which was afterwards transferred to the first Court of the Munsif of that place) against Surja Singh Eaghunath Singh and Narasinghdas Agarwalla for a declaration of his title to the sum of Rs. 1994 odd out of the money deposited by B.N. Ry. Company to the credit of Surja Singh Raghunath Singh. This suit was decreed against Surja Singh Raghunath Singh but dismissed against Narasinghdas Agarwalla. Thereafter the latter withdrew Rs. 1100 from the money lying in deposit in the Court leaving a sum of about Rs. 1400 in Court. Another firm of the name of Rabi Singh Deep Singh alleging to be the decree-holder of the Firm Surja Singh Raghunath Singh brought a suit in the Court of the fourth Subordinate Judge against Surja Singh Raghunath Singh, the present petitioner, and Narasinghdas Agarwalla for a declaration that the decree obtained by the petitioner was collusive and fraudulent and that the said decree did not in any way affect his right to get the decree obtained by him satisfied out of the money deposited by B. N. Ry. Co. This suit was ultimately dismissed. The petitioner filed an application in money suit No. 63 of 1926 in the fourth Court of

the Subordinate Judge after he obtained the decree against Surja Singh Raghunath Singh praying that no one should be allowed to take any sum out of the money lying in deposit to the credit of that suit. The opposite party in the present Rule alleging to be the decree-holder creditor of Surja Singh Raghunath Singh attached and withdrew Rs. 161 which was then lying in deposit, after the petitioner's right to the money deposited was declared. Thereafter the present petitioner raised the present suit in the Court of the first Munsif at Alipur for recovery of this amount from the opposite party.

2. The learned Munsif who tried this suit held that the opposite party wrongly withdrew the amount from the Court and he was bound to refund it to the petitioner. He also held that the petitioner's suit was not barred by limitation. He accordingly decreed the suit. The opposite party appealed to the lower Appellate Court. The learned Additional District Judge who heard the appeal agreed with the trial Court that the defendant opposite party had no title to the money which he withdrew from Court. He however held that the suit of the petitioner was barred by limitation, as it was not filed within three years from the date of the withdrawal of the money. He accordingly dismissed the suit. The plaintiff thereupon obtained the present Rule. The only point urged by Dr. Pal on behalf of the petitioner is that the learned Additional District Judge was wrong in holding that the plaintiff's suit was governed by Article 62, Limitation Act. This contention is well founded. Article 62 applies to a suit for money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use. The facts in this case clearly indicate that at the time when the defendant withdrew the amount in question, he did not do so for the plaintiff's use. In fact he set up an adverse title to the claim of the plaintiff. His case was that the money did not belong to the plaintiff petitioner but to the firm Surja Singh Kaghunath Singh. I am therefore clearly of opinion that Article 62 does not apply to this suit. This view is supported by the observation of their Lordships of the Judicial Committee in *Gooproo Das Pyine v. Ram Narain Shao* (1884) 10 Cal. 860, and also by a decision of this Court in *Anantram Bhattacharjee v. Hem Chandra kar* A.I.R (1923). 379. The suit in my opinion is governed by Article 120, Limitation Act.

3. Mr. Majumdar appearing on behalf of the opposite party made an attempt to support the decree of the lower Appellate-Court on the ground that this suit was not maintainable in the Court of the Munsif at Alipur in view of the provisions contained in the proviso to Order 21, Rule 52, Civil P.C. I am unable to accept this contention of Mr. Majumdar. That proviso simply lays down that if there is any dispute on the question of title or property arising between the decree-holder and any other person, not being a judgment-debtor, claiming to be interested in the property attached by virtue of any assignment, attachment or otherwise, that dispute is to be determined by the Court in whose custody the money is. That proviso does not bar a regular suit. Any decision in such a proceeding between the decree-holder and the third person would not be a decision u/s 47, Civil P.C., and therefore a regular suit would not be barred. It

appears from the pleadings of the parties in this suit as well as in the issues that the defendant raised the question about the validity of the declaratory decree which the plaintiff petitioner obtained against the firm Surja Singh Raghu Nath Singh. There was a finding by the trial Court that that decree was a valid decree and that at the time when this money was attached by the defendant the original decree-holder, that is the firm Surja Singh Raghunath Singh had no title to this money. There was an appeal by the defendant to the lower Appellate Court. In the memorandum of this appeal this decree was not challenged as a collusive decree. Under the circumstances it can be fairly presumed that the defendant abandoned his plea that the decree obtained by the plaintiff petitioner was not a valid and binding decree on the judgment-debtor. The Courts below were therefore right in holding that the defendant wrongfully withdrew the amount in question from the executing Court. The result therefore is that this Rule is made absolute, the judgment and decree of the Additional District Judge dismissing the petitioner's suit are set aside and those of the trial Court are restored with costs in this Court as well as in the lower Appellate Court. The hearing fee in this Court is assessed at two gold mohurs.