

(1937) 04 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No. 310 of 1936

Krishnaji Vishnu Murale

APPELLANT

Vs

Vishnu Pandharinath Barsode

RESPONDENT

Date of Decision : 23-04-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73
Dekkhan Agriculturists Relief Act, 1879 — Section 22

Citation : AIR 1938 Bom 90 : (1937) 39 BOMLR 1212 : 173 Ind. Cas. 561

Hon'ble Judges : John Beaumont, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

John Beaumont, Kt., C.J.—This is a revision application u/s 115 of the Civil Procedure Code, which raises a short point as to the right of the applicants to rateable distribution u/s 73 of the Code. The facts are that the applicants obtained a money-decree against the defendant, and in their suit it was admitted that the defendant was an agriculturist, and it is further admitted that the decree shows on the face of it that the defendant is an agriculturist. That being so, by virtue of Section 22 of the Dekkhan Agriculturists' Relief Act the decree could not be enforced by attachment and sale of the Immovable property of the debtor. The opponent obtained a decree in another suit against the same debtor, and in that suit it was held that the debtor was not an agriculturist. Therefore the decree in that suit can be executed by sale of the Immovable property of the debtor. The opponent then applied to execute his decree by sale of the Immovable property, and thereupon the applicant made an application u/s 73 of the Code for rateable distribution in respect of the amount due to him under his decree, The learned Judge held that the applicant was not entitled to rateable distribution, because his decree could not have been executed against the land from the sale of which the money sought to be rateably distributed was derived. The question is whether that decision is right. Now Section 73 provides that where assets are held by a Court, and more persons than one have before the

receipt of such assets made application to the Court for execution of decrees for payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons. It is said that all the conditions of that section have been complied with by the applicant, that the assets are held by the Court, that the decrees obtained by the decree-holder and the attaching creditor are both decrees for the payment of money, that such decrees were obtained against the same judgment-debtor, that the applicant applied for execution to the Court by which the assets are held, and that application was made before the receipt of assets by the Court. Assuming all those facts in favour of the applicants, I think that they are not entitled to rateable distribution. In my opinion the application to the Court referred to in Section 73 must be one which, on the face of it, is entitled to succeed. If the decree under which the applicants claim is on the face of it one which could not be executed against the property represented by the money in Court, it seems to me that the Court cannot allow the applicants to share in the rateable distribution of such money. This view accords with the cases referred to by the learned Judge in *Maniklal Venilal v. Lakha and Mansing* ILR (1880) Bom. 429 and *Bithal Das v. Nand Kishore*. ILR (1900) All. 106

2. I have no doubt the Court u/s 73 of the Code is taking a step in execution, and the ordinary rule is that the executing Court cannot go behind the decree, and I quite agree with the decision of the full bench of this Court in *Dattatraya V. Purshottam* 1921 24 Bom. L.R. 1 which holds that u/s 73 the Court cannot consider the question whether one of the decrees was obtained by fraud or collusion. But in such a case the decree on the face of it is good. In this case the decree on the face of it is not good so far as the right to execute it against Immovable property is concerned. In a case where the decree, as here, shows that the judgment-debtor is an agriculturist, or it may be, if the decree shows on the face of it that it is time-barred, I think the Court could not allow rateable distribution. Mr. Gajendragadkar contends that all that Section 22 of the Dekkhan Agriculturists' Relief Act does is to prevent attachment and sale in execution of the Immovable property of the debtor, and he says that if property which was Immovable property of the debtor at the time of the applicant's decree is subsequently converted into cash, he could levy execution against that cash, and if there is any surplus over and above the amount due to the opponent on his decree, he will be entitled to attach that surplus. That may or may not be so. The question would depend on whether the proceeds of a sale carried out by the Court of property which was Immovable property at the date of the applicants' decree can be regarded as moveable property at the time when the applicants seek to execute their decree, and whether such proceeds retain their character of Immovable property as against the applicants. That is a question which does not arise on this application, which deals merely with the right of rateable distribution as between these two creditors. In my opinion the applicants must fail on the ground that their decree in respect of which they seek rateable

distribution is one which on the face of it is not executable against the property from which the assets held by the Court are derived. I think, therefore, that the judgment was right, and the application must be dismissed with costs.