

(1942) 01 PAT CK 0017
In the Patna High Court

Kumaid Kumar Singh

APPELLANT

Vs

Amar Nath Singh and Others

RESPONDENT

Date of Decision : 09-01-1942

Acts Referred:

Citation : AIR 1943 Patna 10

Hon'ble Judges : Harries, C.J.;Dhavle, J

Bench : Full Bench

Judgement

Harries, C.J.—This is a miscellaneous second appeal from an order of the learned District Judge of Gaya in certain execution proceedings. The decree-holder respondents had attached 5 annas 4 pies share in tauzi No. 6903 in village Pakaria. The judgment-debtor applied for valuation giving the valuation at Rs. 6000. The decree-holder, on the other hand, valued the property at Rs. 500. The learned Subordinate Judge who heard the case at first instance valued the property at Rs. 1836 and that valuation was affirmed by the learned District Judge. In the proceedings it had been alleged that one Bateshwar Nath Singh acting on behalf of himself and his minor brother Kapildeo Narain Singh had been paid a sum of Rs. 175, and it was alleged that the decree had been satisfied to that extent. The decree-holders were a joint family, and, on their behalf, it was alleged that the receipt of Rs. 175 by a junior member of the family, who was neither karta nor an agent of the family, would not operate as a discharge pro tanto of the decree. The Courts below came to the conclusion that the receipt of the money by Bateshwar would operate as a discharge pro tanto of his share of the decretal amount but would not operate as a partial discharge of the shares of the other members of the family.

2. The judgment-debtor appealed from the decision of the Subordinate Judge to the Court of the District Judge, and there was a cross-objection by the decree-holders. The appeal was concerned with valuation and the cross-objection with this matter of pro tanto discharge of the decree. As I have stated, the learned District Judge upheld the learned Subordinate Judge on the question of valuation

and he was also of opinion that the receipt by Bateshwar of Rs. 175 operated as a pro tanto discharge of his share of the decretal amount. The judgment-debtor has appealed to this Court, and there is a cross-objection by the decree-holders. The appeal is directed to the question of valuation and the cross-objection is confined to the effect of the payment of Rs. 175 to Bateshwar. It will be convenient, in the first place, to deal with the appeal which concerns valuation.

3. In support of their contention that the property attached was worth only Rs. 500, the decree-holders put in a sale deed, dated

i 17th April 1940, by which certain property in two adjoining tauzis of the same village had been sold for Rs. 1500. The properties consisted of 2 annas 8 pies in one tauzi and 4 annas in another tauzi. The Courts below declined to regard this sale deed as any criterion. The learned District Judge points out that there is nothing to show that the lands were similar to the lands in question in this case and further the sale took place in circumstances in which a fair price is rarely obtained. The decree-holders have not filed a cross-objection on the question of valuation and have accepted the Court's valuation of Rs. 1836. Mr. Lal Narayan Sinha who appeared on behalf of the judgment-debtor appellant at first urged that this sale deed strongly supported his case. It appears that his instructions were to the effect that the sale deed comprised only of 2 annas 8 pies of a tauzi, whereas in fact it comprised two items of property, 2 annas 8 pies in one tauzi and 4 annas in another tauzi. Further, it seems clear that the tauzis which were the subject-matter of this sale deed were more valuable than the tauzi out of which the 5 annas 4 pies was attached in this case. The sale deed, far from assisting the judgment-debtor, goes against him. Fortunately for the appellant the Courts did not accept the sale deed as a good criterion. The weight to be given to such evidence is a matter for the Courts below, and there seems to be no reason to doubt the view of the two Courts.

4. The Courts below valued the property on evidence adduced by the judgment-debtor, namely, on the value placed on this property in certain batwara proceedings. Mr. Lal Narayan Sinha has not argued that the Court was not entitled to act upon that evidence, and, indeed, it would be difficult for him to take that stand as it was his own client who tendered the evidence and asked the Court to act upon it. In fact, the appeal against the valuation has not seriously been pressed, and I can see no ground whatsoever for interfering with the orders of the Courts below on this question of valuation. The point raised in the cross-objection has, however, been strenuously argued. According to the decree-holders, the judgment-debtor persuaded one of the junior members Bateshwar to file a petition of satisfaction to the extent of Rs. 175. In this petition Bateshwar acted not only on behalf of himself but also on behalf of his minor brother Kapildeo Narain Singh. It is conceded that Bateshwar is not the karta of the family, but, on the contrary, is a junior member.

5. On behalf of the decree-holders Mr. B.N. Rai has argued that no one can represent the minor Kapildeo Narain Singh except his guardian, and his guardian

was not Bateshwar. Mr. Lal Narayan Sinha has not contended that Bateshwar was entitled to represent the minor or to accept payment on his behalf. That being so, the payment cannot be regarded as a payment to the minor as it is clear that a person who is not the guardian of a minor cannot accept payment on behalf of the minor. It was urged by Mr. Lal Narayan Sinha that as Bateshwar was not the guardian of the minor Kapildeo the appeal to the lower appellate Court was not competent and neither was the appeal to this Court by reason of the fact that Bateshwar was acting as guardian of Kapildeo. However, on inquiry it is clear that in the lower appellate Court and in this Court Kapildeo appears through pleader guardians who have been appointed by the Court. The appeals therefore were in order. In my view both the Courts below were right in treating this Rs. 175 as a payment not made to the minor. Mr. B.N. Rai has urged that the Courts below were wrong in holding that the payment of Rs. 175 can be regarded as a payment discharging pro tanto Bateshwar's share of this debt. He has urged that Bateshwar being a member of a joint Hindu family has no definite share in the debt. His share is an undivided share.

6. It has been laid down that a member of a joint Hindu family other than a karta who receives payment may by such receipt satisfy the debt wholly or in part. There would be such satisfaction if the person receiving payment had been authorized by the family to receive such payment; but where he has not been authorized there is no satisfaction of the family debt and further it cannot be said that there is satisfaction wholly or in part of any share of the debt as a coparcener has no definite share which he can recover by execution. In the Courts below reliance was placed by the judgment debtor on a Bench decision of this Court *Sadho Saran Pande Vs. Mt. Subhadra and Others*, , in which it was held that it was not open to one of two joint holders of a decree to certify satisfaction of the whole decree so as to bind the other decree-holder. But a joint decree-holder could certify satisfaction in respect of his own interest in the decree. This case, it was urged, supported the decisions of the Courts below that Bateshwar could give satisfaction pro tanto of his own share in the decree. It is to be observed, however, that in this Patna case the joint decree-holders were two ladies who had separate shares in the decree. This is clear from the observation of Das, J. at page 96:

But at the same time I am of opinion that a joint decree-holder may certify satisfaction in respect of his own interest therein. This point is not dealt with in the judgment of the lower appellate Court. There is no injustice in passing an order of this nature as Sona Kuar is bound by her own admission that she has received the entire decretal amount. Subhadra Kuar is only entitled to her share of the decretal amount and she is entitled to execute her decree to that extent. There is no reason to put her in a better position than that.

7. The fact that Subhadra Kuar was entitled to execute the decree for her share shows that she had a definite and separate share in the decree. No member of a joint family can execute for his share of a decree held by the joint family. The

ease of this Court is clearly a case where the joint decree-holders have divided separate shares in the decree.

8. The point now before the Court has been considered on a number of occasions by the Madras High Court, and that Court has consistently held that a payment of the amount of a decree to one of a number of joint decree-holders cannot be treated as satisfaction of the decree even in part, unless it is admitted by the other decree-holders or unless it is proved that he and the others to whom the money was due owned separate and definite shares in the joint decree. Where the joint decree is owned by a joint family, then payment to one of the members will not operate as satisfaction wholly or in part of the decree or of the share of that particular member in the decree. The precise point is considered in *Mahomad Silar Sahib & Co. v. Nabi Khan Sahib* AIR 1917 Mad. 988. This case followed an earlier case *Periasami v. Krishna Ayyan* (02) 25 Mad. 431. The former case was followed in a more recent case *Pitchakkuttiya Pillai and Others Vs. Doraiswami Mooppanar and Others*, a These eases lay down that a payment to a junior member such as the payment in this case will not even operate to discharge pro tanto that junior member's interest in the decree. The junior member has no separate share against which this payment can be set off. In my view, the Madras eases lay down the correct principle and should be followed in this case. That being so, the sum of Rs. 175, which was paid to Bateshwar, cannot be taken as satisfying either the decree as a whole or the shares of either Bateshwar or Kapildeo in the decree. If the judgment-debtor is made to pay the whole of the decree he will, of course, have a right against Bateshwar if he can prove any representation by him that he was acting as agent for the family.

10. It was urged by Mr. Lal Narayan Sinha that Bateshwar did represent himself as agent of the family to receive this payment. That being so, it was urged that the Court should order that he make good his representation. In short, the executing Court should define the shares of the family in this debt and order satisfaction to the extent of Rs. 175 of the share of Bateshwar. Reliance was placed upon a Bench decision of the Calcutta High Court *Ram Sundar Das v. Brahmadeo Narain Thakur* 14 C.W.N. 552. It is unnecessary to consider whether the principle of that case can be applied in the present case, because, the Courts below have never been asked to consider whether or not there was any representation made by Bateshwar. The case has always proceeded upon the basis that this payment was made to Bateshwar and because Bateshwar was a member of the family there was satisfaction of either the family debt or Bateshwar's share of it. It has never been the case of the judgment-debtor until now that the judgment-debtor was induced to pay this money upon a representation made by Bateshwar. There is no reference to the contention in either of the judgments, and there is no finding, and it is clear that the point has only been raised in this Court for the first time. A point of law cannot be raised in second appeal for the first time if an investigation of facts and fresh findings of fact: are required before such a point can be determined. A fresh investigation of the facts; and fresh findings would be required before this last point raised by Mr.

Lal Narayan Sinha could possibly be decided. That being so, this new point cannot be entertained in second appeal. It must not be thought that I express any opinion as to whether such a point, if it could be legitimately taken, is or is not a good point.

11. For the reasons which I have given, I would dismiss the appeal with costs. I would allow the cross, objection and direct that the sum of Rs. 175 paid to Bateshwar is not a payment in satisfaction of the decree held by the family or in satisfaction of the undivided share held by either Bateshwar or the i minor Kapildeo Narain Singh. The respondents are also entitled to their costs on this cross-objection.

Dhavle, J.

I agree.