

(1937) 12 PAT CK 0004
In the Patna High Court
Case No : Appeal No. 168 of 1935

Lakhan Sao and others

APPELLANT

Vs

Firm Kani Ram Bhagwan Das and another

RESPONDENT

Date of Decision : 06-12-1937

Acts Referred:

Citation : (1937) 12 PAT CK 0004

Final Decision : Dismissed

Judgement

Wort, J.—In my judgment this appeal fails. It is by the defendants and the first point argued is that the suit in the form in which it was brought is not maintainable. O. 30, R. 1, Civil P. C, is relied upon for this contention. That Order enables a firm to sue in the firm's name. The authorities of the various High Courts are to the effect that this Order does not apply to the; business of a, joint Hindu family. It is said in this case that the claim is by a joint Hindu family in the firm's name. A statement of the facts, it seems to me, disposes of this point. In the first instance I should like to observe that this question was not raised in the written statement. In the plaint the plaintiffs are described as firm. Kani Ram Bhagwan Das through Babu Kani Ram alias Kanhu Lal Marwari". This is nothing more than Babu Kani Ram bringing an action on behalf of Kani Ram Bhagwan Das. In my judgment in the circumstances it is not a case in which a joint Hindu family sues in the firm's name. The questions which were raised in connexion with the statement of the learned Judge on this point therefore do not arise. The statement of the learned Judge had reference to the question whether the coparceners of the plaintiff Babu Kani Ram were partners in this business, or to put it more accurately, coparceners with the plaintiff in the joint Hindu family business.

2. The next argument is that the minors were not represented in the compromise which was effected and out of which ultimately the execution proceedings were brought, and the property sold to the plaintiff in pursuance of that execution. Undoubtedly in the previous action in which money decrees had been obtained

the defendant appellants, some of whom were minors at the time the compromise was entered into, tiled separate vakalatnamas represented by persons other than the person who signed the compromise decree, which is the subject-matter of this action. But again a bare statement of the facts shows that there is really no substance in the point. The compromise in no way gave title to the property which is in dispute in this case. A valid decree had been obtained against the defendants in that suit together with the present appellants before us, and the title depended upon the validity of the decree which as I have already indicated is not questioned in this appeal. No rights other than what the plaintiff already had or no rights other than what the decree-holder already had were given by the compromise decree. As a matter of fact it gave certain reliefs to the defendants in the suit which they would not have had otherwise than by the compromise. The minors' rights therefore are not affected and the question whether they were properly represented by the person who signed the compromise petition does not arise.

3. The third point argued is that the learned Judge had no jurisdiction to allow the compromise in the form in which it was made. From what I have already observed it will be seen that there were two decrees and there is a further fact which it is necessary to mention in this connexion and that is that only as regards one had execution been taken out. Then the parties came along and by the compromise in effect these two decrees were consolidated; the parties agreed to pay installments and also agreed that, in the events of the installments not being paid, execution could be taken out as regards both. The point taken, as I have observed, is that the Judge had no jurisdiction to make this consolidation : that in substance states the argument. But the learned Judge had jurisdiction over both the decrees and execution of both the decrees, and the mere fact that the compromise was stated in one petition to be with regard to two decrees in no way affects the jurisdiction of the learned Judge. Had the parties been so minded, they could have entered into a compromise separately in respect of each decree. But the same result is effected by the method which the parties in fact adopted.

4. In this connexion the case in 2 P L T 80 Gohardhan Prasad v. Bishunath Prasad, AIR (1921)Pat 840 : 58 I C 393 , 2 PLT 80 is relied upon. There the learned Judge effected a compromise with regard to a decree which was, so far as execution was concerned, barred by limitation. Coutts and Adami JJ. there decided that the order which the learned Judge made purporting to be under O. 20, R. 11 was without jurisdiction. It followed as of necessity that being without jurisdiction the order was ineffective and could not revive a decree which, as I have already stated, was barred by limitation. That case in my opinion has nothing to do with the matter before us excepting so far as it is referred to in a judgment by the Chief Justice and Kulwant Sahay J. in the very matter with which we are dealing, and my reference to that raises the further question which appears to be a complete answer to the appellants' third point. The very same question which is now argued came before the Munsif and ultimately found its

way before my Lord the Chief Justice and Kulwant Sahay J. They decided that the Munsif was correct and that the point was without substance. Now, it is contended by Dr. Mitter that the decision of this Court is not res judicata; that may be so. But the fact remains that the question was raised before the Munsif and as I have said ultimately came before this Court. Although perhaps not strictly res judicata, it is quite clear that this Court would have no jurisdiction to overrule a decision of a Division Bench of this Court on the very point which is now argued and between the same parties. In my judgment that point also fails with the result that the appeal fails and must be dismissed with costs.

Manohar Lall, J.

I agree.