
(1921) 03 AHC CK 0005
In the Allahabad High Court

Lala Ajodhya Prasad

APPELLANT

Vs

Musammat Katori

RESPONDENT

Date of Decision : 17-03-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 4

Citation : 61 Ind. Cas. 484

Hon'ble Judges : Walsh, J; Ryves, J

Bench : Division Bench

Judgement

Ryves, J.—This revision arises out of a suit brought by the plaintiff against seven defendants for sale on a mortgage. It was alleged in the plaint that defendant No. 6 and defendant No. 7, namely, Pitam and Musammat Katori, pretended to have acquired under a partition a grove which was included in the mortgage, but that, as a matter of fact, they had no concern with any of the mortgaged property and that, therefore, they were joined as defendants merely to avoid future complications. It appears that defendants Nos. 1 to 5 were duly served with notice but did not appear at the date fixed for the bearing. Defendants Nos. 6 and 7 also were absent. The ordinary decree in accordance with Order XXXIV, Rule 4, was drawn up. No distinction in that decree was made in any of the defendants. Subsequently, Pitam and Musammat Katori applied to the Court to set aside the ex parte decree on the ground that they had not been duly served with notice. The decree-holder at once applied to the Court stating that Pitam and Musammat Katori had only been made pro forma defendants and that no relief was sought against them, and, in order to make the point quite clear, formally exempted them from the decree which had been passed in the case. The learned Judge, however, without giving any reason, has set aside the ex parte decree and ordered the whole case to be re opened. What he says is this: "Having regard to the allegations made in the application, the whole case deserves to be re opened." However, he has not told us what the allegations in the application are to which he refers, nor why the case deserves to be re opened, nor has the learned Pleader who appears for the opposite party bean

able to enlighten us on this point. It seems to us that it would be unfair, under the circumstances, to re open the whole case, at the instance of persons who no longer are in any way interested in the decision of that case. They have been expressly exempted from the decree and we do not understand what legitimate object they have in wishing to get the case, which is dead against them, re opened. In our opinion the Court had really no jurisdiction to pass this order and we, therefore, set it aside with costs.

Walsh, J.

2. I agree. I will say a word or two to explain my own position in the matter. It is a very strong thing to re-open a decree passed against defendants who have been properly made parties to a suit and properly served and who have deliberately kept away and allowed judgment to go against them by default, it is a still stronger thing to set that judgment aside in their favour voluntarily or, in other words, without any application or invitation made to the Court by the persons concerned. This case has the further remarkable feature that the application on which the learned Judge made this extraordinary order was a perfectly innocent one on the face of it, by somebody who could not be hurt by the decree and who, therefore, could not be benefitted by the order setting it aside, but who had a legal right to have it set aside, because he has not been served with a proper notice. It would be idle to deny that there are cases in which a Court has jurisdiction to re-open proceedings in favour of or even against parties who have not made an application or are not parties to the appellate or review proceedings; but those are cases in which it is necessary, in the interests of justice, to make an order to deal satisfactorily with the application of the party who is present, and, in such a case, it is the bounden duty of the Judge to explain in clear language the grounds and to state the conclusions on the matter in evidence upon which he arrived at his decision. But that is a class of cases to which the case now before us bears no analogy at all. A Judge cannot give himself jurisdiction to do what he otherwise might do if there was evidence to justify it by introducing wholly imaginary or illusionary considerations, and what the learned Judge means by saying that the whole case deserves to be re-opened having regard to the allegations made in the application, nobody not even the learned Vakil supporting the order--seems to have the faintest notion, In my opinion, the order of the learned Judge in this case was an order in excess of his jurisdiction, there being no facts before him to justify the course that he took.