
(1912) 05 CAL CK 0033
In the Calcutta High Court

Ligraj Patjosi

APPELLANT

Vs

Mahadeb Ram

RESPONDENT

Date of Decision : 24-05-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2

Citation : 53 Ind. Cas. 882

Hon'ble Judges : Beachcroft, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This appeal is directed against an order made apparently under Order XXI, rule 2, of the CPC of 1908. On the 14th September 1910, a consent decree was made between the parties to this appeal. Under that decree the respondent, who was the defendant in the suit, undertook to deliver to the plaintiff-appellant, within seven days, a parcel of land and to raise a wall within the 14th January 1911. The decree further provided that if the defendant failed to carry out the terms of the decree, the plaintiff would be at liberty to execute the decree. The decree further stated that the defendant, as soon as he had carried out the terms of the decree, would notify the fact to the Court. On the 12th January 1911 the defendant intimated to the Court that he had complied with the terms of the decree. This application was received but no action was taken upon it. On the 17th February 1911 the Pleader for the plaintiff discovered that this application had been made and he forth with preferred objections. On the next day, the Court directed notices to issue upon plaintiff as well as the defendant and fixed the case for disposal on the 4th March 1911. On that date, the defendant did not appear and his application was dismissed. On the 4th April 1911 the defendant renewed his application with an express prayer that satisfaction might be entered in the decree under rule 2 of Order XXI of the Code. This was opposed by the plaintiff and the result was that the Court on the 8th July 1911 dismissed the application as barred by Order IX, rule 9. The defendant thereupon appealed, and the District Judge on the 4th December held that the second application was not barred. In this view, he remanded the case

in order that the truth of the allegation of the defendant might be investigated. The present appeal is directed against that order. On behalf of the appellant it has been contended, first, that the second application is not maintainable, and secondly, that, if maintainable, it is barred by limitation under Article 174 of the First Schedule of the Limitation Act. In our opinion, there is no substance in either of these contentions and that the proceedings have been throughout misconceived. The application of the 12th January 1911 was not an application under rule 2, sub-rule (1) of Order XXI, which provides that where any money payable under a decree of any kind is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly. Even if it could be said in this case that there was an adjustment of the decree, it was not alleged by the defendant judgment-debtor that there was an adjustment either in whole or in part, to the satisfaction of the decree holder, and his application of the 12th January 1911 was not an application under sub rule (2) of rule 2 for issue of notice to the decree-holder to show cause why the adjustment should not be recorded as certified. The defendant was bound by the decree to notify to the Court that he had carried out its terms, and this he did. He did not invite the Court to take any action, and, as we have seen, no action was taken till the Pleader of the plaintiff discovered that the application had been made. In our opinion, the application is clearly not one under sub rule 2 of rule 2 of Order XXI and no action ought to have been taken thereon. The proper course for the plaintiff is to apply for execution of the decree, if his case is that the terms of the decree have not been faithfully carried out by the defendant. If such application is made, it will be open to the defendant to show that he has, as a matter of fact, carried out the terms of the decree. The Court will then be in a position to consider whether the terms of the decree have been carried out. We are informed that an application for execution was presented but was struck off by reason of the pendency of the appeal in this Court. If that is so, it will be open to the plaintiff to apply for revival of that application and proceedings may be taken on the basis of the application so revived or of a fresh application for execution.

2. The result is that this appeal is allowed and the orders of both the Courts below are discharged. Under the circumstances, each party will pay his own costs throughout the litigation.