

(1917) 03 PAT CK 0023
In the Patna High Court

Mahanth Kesho Dyal Gir

APPELLANT

Vs

Musammat Sakina Bibi and Others

RESPONDENT

Date of Decision : 12-03-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 110, 48

Citation : AIR 1917 Patna 493(2) : 39 Ind. Cas. 141

Hon'ble Judges : Edward Chamier, C.J.; Sharfuddin, J

Bench : Division Bench

Judgement

Edward Chamier, C.J.—This is an application for leave to appeal to His Majesty in Council.

2. As the judgment of this Court affirmed the judgment of the Court below, the appellant is not entitled to obtain leave to appeal unless he can show that the proposed appeal involves a substantial question of law. At the outset I may say that it is quite clear that the circumstance that a question of law affects property exceeding Rs. 10,000 in value does not necessarily make that question a substantial question of law within the meaning of Section 110 of the Code of Civil Procedure.

3. The facts of the case are set out at length in the judgment of this Court. For our present purpose it is sufficient to say that a decree for sale of the mortgaged property was made absolute on February 6th, 1898. Various applications for execution were made in 1904, 1907, 1911 and 1912 and the application out of which the present proceedings have arisen was made on July 18th, 1913. The Subordinate Judge held that the application must be dismissed with reference to the provisions of Section 48 of the Code of Civil Procedure, as it was made more than twelve years from the date of the decree sought to be executed

4. The first question of law, which is relied upon as justifying the present application for leave to appeal, is the question whether Section 48 of the present CPC applies to a decree passed at a time when the Code of Civil Procedure,

1882, was in force. There is not a solitary decision of a High Court in favour of the view that Section 48 of the present CPC does not apply to such a decree, but there is a mass of authority on the other side and it appears to me that there can be no doubt whatever that Section 48 of the present Code does apply to a decree passed under the old Code of Civil Procedure. In the face of the authorities on the subject I am unable to say that the question can any longer be described as a substantial question of law.

5. The next question supposed to be a question of law was whether the appellant was prevented by force or fraud on the part of the judgment-debtors from executing the decree for four years, seven months and eighteen days. There appears to be no justification whatever for the suggestion that the decree-holder was prevented by fraud or force on the part of the judgment-debtors from executing his decree, and, moreover, the question is not a question of law in the form in which it arises in the present case.

6. The next question is whether a supposed acknowledgment of March 1902 gave the decree-holder a fresh period of twelve years, not merely a fresh period of three years under the Limitation Act but a fresh period of twelve years under the Code of Civil Procedure. The question has only to be stated to make it clear that it is not a substantial question of law.

7. The last question which is put, forward as justifying this application is, whether the appellant's application for execution should be held to have been presented within time by reason of certain payments made by the judgment-debtors in 1912 and statements made in petitions filed by the judgment-debtors in that year. Nothing was said about this at the hearing of the appeal in this Court, but after the appeal had been dismissed an application was made to us to review our judgment on the ground that we should have taken this question into consideration. We declined to review our judgment and said that the suggestion that that proceedings taken on the execution application of July 1911 gave the decree-holder a right to disregard Section 48 of the CPC could not be accepted. It appears to me to be perfectly clear that nothing which occurred after the expiry of the period limited by Section 48 of the CPC could enable the decree-holder to disregard that section and put in a fresh application for execution.

8. Another question was argued before us at the hearing of the appeal, namely, whether the present application for execution was one made in continuation of a certain previous application. That question is disposed of in the judgment and all that it is necessary to say here is that it is obvious that the question is not a substantial question of law.

9. In my opinion this application for leave to appeal must be dismissed, unless it can be held that the question of the applicability of Section 48 of the CPC is a substantial question of law. The other questions are certainly not substantial questions of law. As I have already said, in view of the authorities on the subject I feel bound to hold that the question of the applicability of Section 48 of the CPC

is not a substantial question of law. I would dismiss this application, but would make no order as to costs as the other side is not represented.

Sharfuddin, J.

10. I agree.