

(1920) 04 PAT CK 0015
In the Patna High Court

Maharaja Sir Rameshwar Singh Bahadur	APPELLANT
Vs	
Subu Lal Jha	RESPONDENT

Date of Decision : 30-04-1920

Acts Referred:

Citation : AIR 1921 Patna 360 : 59 Ind. Cas. 25

Hon'ble Judges : Dawson Miller, C.J.;B.K. Mullick, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—In my opinion this appeal should be allowed. The question for determination is a somewhat technical one and arises in the following circumstances. The plaintiff brought a rent suit against his tenant claiming rent for three years. For the first two years the rent claimed was at the rate of Rs. 45, odd, in respect of the holding which during those two years consisted of 12 bighas, 5 kattahs, 8 dhurs. During the third year, as appears from the plaint, the area of the holding had been reduced by reason of a recognised transfer of a part of the holding and, therefore, for that year the rent was only Rs. 26, odd, in respect of the diminished area consisting of 6 bighas, 18 katthas, 51/2 dhurs, and the total amount claimed, after giving credit for certain payments, was Rs. 111-12-0. The suit was apparently uncontested and the facts which I have stated as to the reduction of area, with a consequent reduction of rental, during the third year were clearly put forward in the plaint. An ex parte decree was passed and the operative part of the decree merely directed that the defendant should pay to the plaintiff the sum of Rs. 111-12-0. The recital in the decree, however, which purported to show from the plaint the nature of the claim merely stated that the rental was claimed in respect to an area of 12 bighas, 5 kattahs, 8 dhurs, and that the rental claimed was Rs. 45, odd, That recital was not complete in the sense that it did not state that for the third year, as appeared from the plaint, the area had been reduced to 6 bighas odd and the jama to Rs. 26, odd. It seems clear that in the judgment itself, although we have not had the advantage of seeing the actual judgment, there was no adjudication in the proper sense of the term upon the question of the actual area of the holding and

as the suit was undefended it is reasonable to suppose that the Court assumed, as it was bound to assume in the absence of any evidence to the contrary, that the holding at the date of the suit was of the smaller area, that is to say, 6 bighas, 18 kattahs, 51/2 dhurs.

2. When the plaintiff applied for execution the learned Munsif presiding over the executing Court had his attention drawn to the fact that, whereas, according to the recital in the decree, the area was 12 bighas, odd, the area which the plaintiff sought to sell in execution was only 6 bighas, 18 kattahs, 51/2 dhurs, and, therefore, without any explanation, which does not seem to have been afforded to him, he very properly came to the conclusion that the sale not being a sale of the whole area could only be treated as a sale in execution of an ordinary money-decree and not as a sale which would carry with it all the incidents of a sale under a rent-decree. From that decision the plaintiff appealed to the District Judge and then, for the first time, it was pointed out before the District Judge how the error had arisen, and that although the Munsif upon the information he had, might have been justified in the conclusion which he drew, still in truth and in fact the area of the holding was not the larger area of 12 bighas, odd, but the smaller area of 6 bighas, odd, and, in these circumstances, his decision ought to be set aside and a sale ought to be ordered as a sale in execution of a rent-decree. The learned District Judge, although he admitted the actual facts to be accurate, as I have just stated them, came to the conclusion that, technically, the lower Court was right and that, therefore, the appeal could not be allowed.

3. On appeal from that decision to this Court the case was heard by a single Judge who took the same view as the District Judge and dismissed the appeal. The opinion of the learned Judge of this Court was that there had apparently been some mistake in the decree which, as the lower Appellate Court had stated, had been carelessly drawn up and that, in his opinion, there was no doubt that the view of law taken by the Court below was correct.

4. The only question, it seems to me, which we have to consider is whether in fact the executing Court was bound by that part of the decree which recited the nature of the claim, as set forward in the plaint, and was not entitled to look behind it and see what the actual existing circumstances were. He was undoubtedly bound by the operative part of the decree, that is to say, that the plaintiff was entitled to recover a sum of Rs. 111-12-0 and he had no discretion to consider in any way how far that might be right or might be wrong. By that part he was clearly bound. But the next question that had to be considered was, whether in fact what was being sold, or rather what the plaintiff asked to sell, was the whole holding or only a portion of it. That was solely and simply a question of fact to be decided at sometime or other before the sale took place and before the sale proclamation was issued. Had there been any adjudication by the Trial Court as to the exact area of the holding, that would have been binding upon the executing Court and the executing Court could not have gone behind it.

In such circumstances, the executing Court would have been bound to decide, without any further enquiry, that an application to sell 6 bighas in pursuance of a judgment obtained for rent for a holding of 12 bighas should only be treated as execution of a money-decree but in the present case there was in fact no adjudication at all to that effect, and, therefore, that part of the decree which merely recited, and, recited inadequately, the nature of the claim as set forward in the plaint was not, in my opinion, in any way binding upon the executing Court. The question which the executing Court had to determine was a question of fact and a question of fact upon which there had been no adjudication in the lower Court precluding such a determination, and, therefore, it was within, the competence of the executing Court to examine the record and to ascertain for itself whether in fact it was the whole holding or only a portion of it which was being sold. That the executing Court refused to do. No doubt, that refusal was due to the manner in which the case was presented before it, as the attention of the learned Munsif does not seem to have been drawn to the fact that the plaint showed that the area at the time of the decree was only 6 bighas. When the matter came before the learned District Judge on appeal and the facts were clearly put before him I think that, at that stage, he ought to have allowed the appeal and ordered the sale to take place as a sale in execution of a rent-decree. In my opinion, this appeal ought to be allowed. The respondents have not appeared in this Court and, therefore, there will be no costs of the appeal and, having regard to the manner in which the case has been put forward in the Courts below, I do not think that we ought to make any order as to costs in favour of the present appellant.

Mullick, J.

5. I agree.