

(1921) 05 PAT CK 0027

In the Patna High Court

Maharajadhiraj Sir Rameshwar Singh Bahadur.

APPELLANT

Vs

Mathu Missir and Others

RESPONDENT

Date of Decision : 12-05-1921

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 50

Citation : 62 Ind. Cas. 52

Hon'ble Judges : John Bucknill, J

Bench : Single Bench

Judgement

John Bucknill, J.—This is a miscellaneous appeal from the order of the District Judge of Darbhanga, dated the 23rd July 1920, affirming a decision of the Munsif of the First Court of Madhubani given on the 25th November 1919. The question raises a somewhat curious small point of law.

2. The appellant, who was the plaintiff, had obtained decree for rent against the defendant. This was apparently in 1916. On the 2nd September 1919 he applied for execution of the decree. His application was registered and the usual notices were issued. On the 30th October 1919 the matter came up again and on that date the decree-holder, that is the appellant here, filed a petition stating that the judgment debtor was dead and that he had not yet been able to ascertain who was the legal representative but that as soon as he could find out who the legal representative was, he would apply to substitute him for the deceased. The Munsif placed on his record an order that it should come up again on the 11th November 1919. It duly came up on that date, but the appellants then put in another petition in which they said they still had not been able to ascertain the name of the deceased's legal representative. It was again adjourned to the 18th, and on the 18th the same thing happened. The Munsif then ordered that the matter should be brought forward on the 25th November and added that no further time would be allowed. It came up on the 25th November in due course and then the Munsif, commenting strongly upon the numerous adjournments, refused to adjourn the matter any further and dismissed the application for

execution forthwith.

3. The District Judge of Darbhanga, before whom the matter came, first of all, says that there is no appeal at all against the order by the Munsif and, secondly, he thinks that it was entirely a matter of discretion. He also says that in an execution case the Court is not in any way bound by any period such as is contemplated in Order XXII, Rule 4, Sub-rule (3).

4. Now, the question here is, whether on the death of a judgment debtor the judgment-creditor has any specified period within which he can make his application for the substitution of the legal representative of the deceased in the deceased's place. Under Order XXII, Rule 4, it is provided that where a defendant dies and the right to sue survives, the legal representative may be added in the manner prescribed but that if no application is made within the period laid down by law, the suit abates as against the deceased defendant. The period laid down by law is quite clearly prescribed under Item No. 177 of the 1st Schedule to the Limitation Act of 1908 as six months. It should be observed, however, that although one might think of applying these orders to execution proceedings, it is expressly provided that they do not apply by Order XXII, Rule 12. We are, therefore, thrown back upon that portion of the CPC which deals with execution processes. Now u/s 50 of the CPC we find it stated that where a judgment-debtor dies, the decree holder may apply to the Court which passed the decree against that judgment-debtor, in order that he may execute it against the legal representative of the deceased. In theory there is nothing to prevent the estate of the deceased person being liable for the debt of the deceased person contracted by him, and there is no doubt that in a case such as this there is no reason why the deceased's estate should not, if possible, be proceeded against; the legal representative holds the estate presumably under his control, and it is on that account that an application may be made to the Court in order that execution may proceed or continue against the legal representative as representing the deceased's estate. The only question is as to what is the period within which the judgment-creditor can apply to pursue his claim against the legal representative of the deceased. I think it must be at any rate possible for him to have the period allowed by Item No. 177 of the Limitation Act; that period is the period of six months from the date of the death of the deceased defendant. Here although the defendant is a judgment-debtor, it seems to me that his position is probably the same as that of the defendant.

5. It is suggested that if this Item No. 177 does not apply it may be that Item No. 181 may apply, but I do not wish to express any opinion upon this point at present.

6. Now as I think, therefore, that under the circumstances such as these, it is probably open to the judgment-creditor to apply within a period of six months from the date of his judgment-debtor's death for leave to continue execution against the legal representative of his judgment debtor, it is important here to observe that in this case the time, of course, has now long since passed. It

should be noticed that the appellant applied to the Munsif, pointing out the fact of the death and Baying that he would apply to substitute the name of the legal representative of the deceased as soon as he knew it, In this case, as I have said, that time has now passed, but u/s 5 of the Limitation Act, 1908, provision is made for the allowance by the Court, in circumstances where there is sufficient cause of a further time than that which is allowed by the limitations contained in the Act itself. In the view which I have with regard to the period within which the application might have been made, I think there is no doubt that this is such a case. I shall, therefore, give a period of three months from the date when the record reaches the Munsif's Court within which an application for the substitution of the legal representative in the place of the deceased may be made by the appellant before the proper Tribunal.

7. The appeal is, therefore, allowed.