
(1913) 02 AHC CK 0022
In the Allahabad High Court

Mohan Lal

APPELLANT

Vs

Jagan Nath and Another

RESPONDENT

Date of Decision : 12-02-1913

Acts Referred:

Citation : (1913) ILR (All) 243

Hon'ble Judges : Tudball, J; Muhammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tudball and Muhammad Rafiq, JJ.—This is an appeal arising out of execution proceedings. The facts are briefly as follows: The parties are step-brothers. A suit for partition was brought by the plaintiffs respondents for partition of the joint family property. The suit ended in a decree, dated the 3rd of March, 1908, based on a compromise. The compromise is dated the 14th of January, 1908, and was filed in the course of the appeal in this Court, on the 22nd of January, 1908, and was remitted to the court below for verification and report. It reached the court below on the 31st of January, 1908. According to the compromise the landed property was divided in a certain manner, likewise the house property. With these we are not concerned in this appeal. The third class of property consisted of debts on bonds and on accounts entered in certain account-books. Of this class about ten debts secured by bonds were allotted to the plaintiffs. The remaining debts, including all those due on accounts, were allotted to the defendant. In addition to this allotment of the property under the compromise a sum of Rs. 3,400 was to be paid by the defendant. Of this, Rs. 400 was to be paid at once and the balance of Rs. 3,000 at the end of two years. The compromise on being duly verified was submitted to this Court, and a decree was passed thereunder on the 3rd of March, 1908. The sum of Rs. 400 was paid. In 1910 and 1911 there were applications made by the decree-holders in execution of the decree, whereby they sought to recover the balance of Rs. 3,000. The present application for execution was made in January, 1912. On the 8th of

March, 1912, the judgment-debtor filed certain objections. The objections were that the application was in contravention of the terms of the decree; that the application was time-barred; that interest had been charged by the decree-holders to which they were not entitled, and that since the date of the partition decree the plaintiffs decree-holders had realized a large sum of money out of those debts which had been allotted to the judgment-debtor under the partition decree. On the 16th of March the objections were slightly amplified by another application, in which the judgment-debtor sought for time to bring into court evidence to prove that the decree-holders had realized a large sum out of those debts based on account-books which had been allotted to the defendant. The lower court has disallowed the objections. The plea of limitation was not pressed, and the lower court held that if the decree-holders had wrongfully recovered the debts, the judgment-debtor had his remedy against the decree-holders in a regular suit. The judgment-debtor comes here on appeal, and the first plea taken is that the point raised as to the collection of debts due to the judgment-debtor by the decree-holders is a point which falls u/s 47 of the CPC and the lower court ought to have gone into it. To this we cannot agree. The appellant has an entirely a separate cause of action against the decree-holders, if the latter have as a matter of fact recovered the debts due to him and not to themselves. Once the final decree in the partition suit was passed, the plaintiffs, decree-holders, ceased to have any title whatever to the debts in question. It is not pleaded that the plaintiffs' decree for Rs. 3,000 has been satisfied. There has been no voluntary payment. It is further urged on behalf of the appellant that under Clause (2) of Section 47 we should treat his present petition of objection more in the nature of a plaint, so that the whole proceedings may be treated as a suit by him to recover the amount which he claims to have been collected by the decree-holders. We see no reason to do so, assuming for a moment that the second clause of the section enables us to do as he wishes. The present proceeding is one which has arisen out of an application by the decree-holders and the objections are merely objections asking the court to reject the application. No amount is specifically claimed therein as having been collected by the decree-holders.

2. The second ground of appeal is not pressed. The third ground of appeal has no force. Assuming that the respondents have misappropriated the money due to the appellant, the latter has a remedy by regular suit.

3. The fourth ground of appeal is that as the plaintiffs have refused to fulfil their obligations under the decree they are not entitled to recover the money from the appellant. In so far as the decree itself is actually concerned there is no obligation on the decree-holders which they have to perform. It is urged that on the 31st of January, 1908, when the compromise filed in this Court was received in the court below, an agreement was filed by the parties on the same day under which the plaintiffs, decree-holders, agreed to make over the account-books to the defendant. It is further urged that it was clearly understood by the parties that the defendant was to have two years' time given to him under the decree

(as was actually granted thereby) for payment of Rs. 3,000, because he was to have the account-books at once handed over to him to enable him to recover the debts allotted to him. It is pleaded that the decree-holders have never handed over the accounts to him, and have thereby prevented him from recovering the debts, and as a consequence have prevented him also from paying the sum of Rs. 3,000. It was urged that when the previous applications were made by the decree-holders this objection was all along taken, though it is also admitted that as a matter of fact it was not taken in the present instance in the court below. It seems to us quite clear that the rights of the parties, after the compromise had been arrived at, were governed by the decree of the 3rd of March, 1908. It may be that on a true interpretation of that decree the judgment-debtor was entitled to the possession of the account-books, as the debts based on those account-books were entered therein and they formed the chief proof of those debts. It was open to the judgment-debtor to put the decree into execution and to recover the books from the plaintiffs if they did not deliver them, As a matter of fact the decree is silent as to the possession of the account-books, and we do not think that we can go behind the decree to find out what other rights the parties may have. If any portion of the compromise was accidentally omitted from the decree, it was open to the judgment-debtor to have the decree amended. If he intentionally omitted any portion of the compromise from the decree he has himself to blame... In any case he is not entitled to go behind the decree which finally decided the rights of the parties. This is a point which, as we have already pointed out, was not taken in the court below. If the appellant deems himself aggrieved in any way, we must leave him to his remedy by a separate suit. We think the decision of the court below is perfectly correct. We dismiss the appeal with costs.