
(1936) 01 PAT CK 0011
In the Patna High Court

Mt. Anchahi

APPELLANT

Vs

(Firm) Birjmohan Lall, Madan Lall and Others

RESPONDENT

Date of Decision : 10-01-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 39

Citation : AIR 1936 Patna 177

Hon'ble Judges : Varma, J; Mohammad Noor, J

Bench : Full Bench

Judgement

Mohammad Noor, J.—This appeal arises out of an execution proceeding. It appears that in the course of a suit valued at more than Rs. 5,000 pending before the Subordinate Judge of Shahabad, that officer passed an interlocutory order awarding certain costs to the plaintiffs against certain claimants and against "defendant" (or defendants). There is a controversy whether it was allowed against all the defendants or against a particular defendant. I shall refer to this point later on. The learned Subordinate Judge at the instance of the plaintiffs, to whom the cost was awarded, sent the decree or order for costs for execution by the Munsif of Buxar where execution was taken out against some moveable properties of the appellant. The appellant raised objection to the effect that there was no decree against her as the order for costs was against defendant (singular) and it meant defendant 1 only. This objection was overruled by the learned Munsif who was executing the decree and his order has been upheld in appeal by the learned District Judge of Shahabad. The objector has preferred this second appeal. Here a point has been taken which does not seem to have been raised before either of the Courts below, viz., that the learned Munsif had no power to execute the decree. In my opinion this point though not taken before either of the Courts below must prevail. In this case the decree or order for costs was passed by a Subordinate Judge. The execution of a decree passed in a suit can only be carried out by a Court which is competent to entertain the suit of the particular value. This is not a case of irregularity which can be cured by waiver. This is a case of inherent want of jurisdiction. It was laid

down by this Court in *Amrit Lal v. Murlidhar* 1922 Pat 188 that a Court which has no pecuniary jurisdiction to entertain and try an original suit is not competent to execute the decree in that case, which, therefore, cannot be transferred to it for execution u/s 39, Civil P.C. It does not require much argument to hold that it will be anomalous if a decree passed by a Subordinate Judge whatever its amount may be can be sent for execution to a Munsif with a limited pecuniary jurisdiction.

2. It must be noted that the Court which executes the decree is the Court which is to decide matters regarding the satisfaction of the decree arising between the parties and it will be unthinkable if the Munsif can be allowed to decide whether a decree for a lakh of rupees has or has not been satisfied. Then again the question of the forum of the appeal will be affected. An order passed in course of an execution of a decree by a Subordinate Judge, if the value of the suit, as in the present case, is more than Rs. 5,000, is appealable to this Court both on the question of law as well as on fact; whereas if the execution is taken out before a Munsif, as happened in this case, the appeal lies to the District Court and only a second appeal to this Court. I need not dwell on this topic any further. As I have said, there is a clear decision of this Court which we are bound to follow. In this view of the matter it is not necessary to enter into the merits of the objection raised by the appellant. The whole execution taken out before the Munsif was incompetent and the learned Munsif had no jurisdiction to attach and sell the property. We are, however, informed that in fact some moveable properties were attached and sold and the amount has been realized by the decree-holder. I think the proper order in this case would be to order the decree-holder to deposit the amount realized by them in the Court of the learned Munsif. The amount will then be made over to the appellant whose property was attached and sold. It will be open to the decree-holder to execute his decree before the learned Subordinate Judge who has got territorial and pecuniary jurisdiction in respect of the subject matter of the suit. Any objection to the execution will be decided by him. This order about the refund of the money to the appellant will be subject to any order of attachment which may be received by the learned Munsif from a proper tribunal. As the question of jurisdiction was not raised by the appellant in either of the Courts below she is not entitled to any cost. The parties will bear their own costs throughout.

Varma, J.

3. I agree.