

(1934) 08 PAT CK 0029
In the Patna High Court

Mt. Annapurna Debi

APPELLANT

Vs

Ashutosh Deo Ghatwal

RESPONDENT

Date of Decision : 03-08-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : AIR 1934 Patna 545

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This rule is directed against the order of the Subordinate Judge of Deoghar by which he issued notice on certain decree-holders who were executing their decrees by the method of rateable distribution of the assets of the judgment-debtor. It would appear that the petitioner in this Court had obtained a decree on the Original Side of the Calcutta High Court (by what means it is unnecessary to state) and then, after the execution to which I have made reference had already started applied to the Court of the Subordinate Judge to have share in the rateable distribution to the other decree-holders. It was in those circumstances that the order which is complained of was made.

2. The learned Judge in the course of his order has stated that there were several circumstances in the case which caused suspicion, and it was desirable that some enquiry should be made to ascertain how far the judgment-debtor, Ghatwal, against whom the petitioner had got a decree, was competent to look after his own affairs and interest, and whether he was a free agent in the compromise decree obtained as he did not appear as a judgment-debtor in this execution case, and whether steps should not be taken in the public interest and in the interests of justice to contest the execution of this decree. The sentiments of the learned Judge may be very fine; but the question is whether in expressing himself in that way he was acting within his jurisdiction.

3. I have set out a statement of the Judge himself, because it was suggested by the learned advocate who appears on behalf of the receiver suggested that what

the learned Judge intended to do was to issue notice upon the other decree-holders, calling upon them to show cause why the present petitioner should not participate in the rateable distribution and whether there was any reason (such as given in Section 73, Civil P.C.) why the rateable distribution should not be enjoyed by the petitioner. A perusal of the order and of the references I have made, makes it quite clear to me that the learned Judge intended to throw open an inquiry as to the validity of the petitioner's decree.

4. Now, there is nothing in Section 73, Civil P.C., which gave him jurisdiction to do this. Their Lordships of the Judicial Committee pointed out that in acting under this section or similar section of the old Code, the Court was acting in an administrative capacity. It would surprise me therefore to learn that in dealing with a matter in his administrative capacity the learned Judge should enquire into the validity of any decree and I would therefore even apart from authority, hold that the order of the learned Judge was entirely without jurisdiction.

5. But I would not rely upon my own views with regard to this matter. So far as this Court is concerned, a similar point was decided in the case of *Bibi Uma Habiba v. Mt. Rasoolan* 1926 Pat 497. Another decision to the same effect is the case of *Dattatraya Govindseth v. Purshottam* 1922 Bom 31 as also a decision of the Madras High Court in *Saravana Pillai v. Arunachalam Chettiar* 1918 Mad 825, where a decision of the Calcutta High Court which arrived at a contrary conclusion was discussed. If the matter were left open, I should for myself have preferred the reasonings of the Bombay High Court and the Madras High Court to those of the Calcutta High Court; but as I have already pointed out, so far as I am concerned the matter is settled by the case to which reference has been made. The Madras case cited above referred to an English case, *Bandon v. Henry Becher* 3 C & F 479 and the statement in the course of the judgment of the Madras High Court was this that as regards strangers, in a collateral proceeding they could attack the validity of the decree of which they were not parties.

6. That was one of the arguments addressed by the advocate in the Madras High Court to support the contention that u/s 295 the Judge had jurisdiction to entertain the investigation of the validity of a decree. But the learned Judge who quoted this case, I am afraid, did not do justice to himself by quoting it in the manner he did, because the decision of Lord Brougham in the English case, as quoted by the learned Judge, would lead one to suppose that by a stranger the decree could be attacked in any proceeding. Lord Brougham however laid down nothing of the kind. What he stated in the course of his speech in the House of Lords was that a decree of one Court stood unless a stranger to it could attack it in another Court of competent jurisdiction by stating that it was pronounced through fraud, contrivance or covin of any description.

7. That is a proposition which is well understood in India and in no way supports the contention of the advocate who urges in favour of the order of the learned Subordinate Judge. In so far therefore as the order of the learned Subordinate Judge was directed to the question arising u/s 73, Civil P.C., no objection could

be taken but the order, so far as it enabled the parties sharing in the rateable distribution to investigate the validity of the petitioner's decree, was entirely without jurisdiction and in the result that order must be set aside and the rule made absolute with costs: hearing fee three gold mohurs to come out of the estate.