
(1934) 09 PAT CK 0005
In the Patna High Court

Mt. Laltapati Kuer

APPELLANT

Vs

Narain Mahton and Others

RESPONDENT

Date of Decision : 06-09-1934

Acts Referred:

Citation : AIR 1934 Patna 663

Hon'ble Judges : Courtney-Terrell, C.J.;Luby, J

Bench : Full Bench

Judgement

Courtney-Terrell, C.J.—This is an appeal from a decision of the Subordinate Judge of Patna allowing an objection to an execution proceeding. The suit out of which the execution proceedings arise was brought by the plaintiff against 12 defendants for possession of certain property and for mesne profits. An appearance was entered by defendants 2 and 5 and by the minor defendants under a guardian-adlitem. A decree was granted by the Subordinate Judge for a sum of between six and seven thousand rupees. A certain controversy has taken place before, us as to the construction of this decree.

2. We are satisfied that it is a joint and several decree against all of the defendants notwithstanding that the substantial defence was offered by defendants 2 and 5. It may be that the decree was wrongly passed against those defendants other than defendants 2 and 5. As to that I desire to express no opinion. The fact remains that the defendants other than defendants 2 and 5 neither contested the suit nor did they appeal from the decision nor did they ask for any modification of the form of the decree so as to exempt them from liability. But defendants 2 and 5 preferred an appeal which ultimately came up before this Court, and before this Court the appeal was settled and a consent decree was passed in the following terms:

In this appeal the patties have come to terms. It has been agreed that the defendants appellants will pay to the plaintiff the sum which has been decreed in the mesne profits proceedings plus court fee on the sum of Rupees 4,036 which is the estimated amount of means profits antecedent to the suit on which court-

fee was paid.

3. That is to say, the amount of the decree was reduced from what it had originally stood at to the lesser sum mentioned in the agreed terms. The question arises as to what, if any, the effect of this modification has been upon the liability of the defendants other than those who appealed. The plaintiff sought to put the decree as modified into execution against some of the defendants other than those who had appealed. They objected to the execution contending that the original decree had by consent been set aside, that they had been released from liability under that original decree and that the new decree had substituted a liability for a modified sum of the two defendants who had appealed. This contention was acceded to by the learned Subordinate Judge in the execution proceedings, and from his decision the plaintiff has appealed to this Court.

4. As I have said, in my opinion, the original decree was clearly a decree for the joint and several liability of all the defendants. The consent decree in this Court may be treated from either of two points of view. In the first place, it may be treated as a modification by the Court of the original decree for the benefit of all the body of persons liable under that decree whether they had or had not appealed. This Court has power to do that under

O. 41, Rule 4. It may, on the other hand, be treated as a contract between the plaintiff on the one hand and two out of the persons originally liable on the original decree for a modification of the joint liability of those two persons. In either case, in my opinion, the result is the same.

5. If the latter point of view be the correct one, then the matter may be treated thus. It is immaterial what was the original cause of action in the suit; or that cause of action has been substituted a monetary decree, and the original cause of action is at end and is gone. We now have the case of a creditor to whom a number of persons are under a joint liability to pay a definite sum of money; a new contract is entered into between the plaintiff and two of the many persons originally liable under the original decree whereby the liability is to be reduced from the original amount to a lesser amount. Then the correct view of the law in my opinion is that that reduction enures pro tanto for the benefit of the persons originally liable as well as for the benefit of the persons actually parties to the contract.

6. This view of the law is supported by reference to the judgment of Asutosh Mukherjee, J. in *Bhawani kuer v. Darsan Singh* (1911) 11 IC 450, in which after an elaborate examination of the authorities he holds that where one of joint debtors makes a new arrangement with the creditor by which the amount of the joint liability is reduced, it reduces the amount of the joint liability of the other persons as well as himself. If this were not the law, an anomalous state of affairs should arise.

It is conceded that there was originally a joint liability and the liability can only

remain as a joint liability.

7. In the case of a joint contractual liability or a joint liability under a decree for money it is open to any one of the joint debtors to discharge the joint liability of the entire body of debtors by paying up the amount of the decree. If therefore the reduction in the amount of the liability only affected two of the joint debtors, the difficulty would arise that any one of the joint debtors, who made the new contract could discharge the entire joint liability by paying off the reduced sum to which his liability had been reduced by means of the new contract, that is to say, some of the joint debtors could only pay off their liability by paying one sum; others of the joint debtors could obtain release not only for themselves but for all others by paying a lesser sum, which result is of course ridiculous.

8. In either case whether we treat the new liability as the result of a modification of the entire original decree by the Court by virtue of its power under Order 41, Rule 4, or whether we treat the case as a release by the creditor of two out of a number of jointly liable debtors, the benefit must accrue to the entire body of debtors. It is therefore open to the creditor to pursue his execution for the joint debt against any one of the original joint debtors, but the sum for which he may pursue that execution is limited to the amount by which the debt was modified by consent on appeal to this Court.

In my opinion, the view of the learned Subordinate Judge in execution was erroneous and should be set aside. This appeal succeeds, and the respondents must pay costs.

Luby, J.

9. I agree.