
(1936) 01 PAT CK 0010
In the Patna High Court

Mukhram Mahto and Others

APPELLANT

Vs

Kesho Prasad Singh Bahadur

RESPONDENT

Date of Decision : 23-01-1936

Acts Referred:

Citation : AIR 1936 Patna 258

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This appeal raises a question which presents no difficulty so far as the question of law is concerned, but difficulty so far as the facts of the case are concerned. It is not the business of this Court to consider questions of fact. But the difficulty in the case, to be more particular, arises out of the form in which the plaintiffs claimed their relief. Having regard to the decisions of the Courts below in the principal questions of fact it is clear now that the plaintiffs asked too much. They contended that the whole of the decree was fraudulent, all processes were suppressed and the usual allegations in that regard; but the Courts below have declined to accept the plaintiff's version of that matter. That being so it is quite clear that the plaintiffs were not entitled to a declaration that the decree was a nullity and that the execution was a nullity. At most the plaintiffs would be entitled to a declaration that the right, title and interest only of Ramdahin passed and not the interest in the joint family property.

2. A certain amount of confusion has arisen by reason of the argument which, as I understand it, was to the effect that as it was a rent decree the plaintiffs were bound to execute it against the rent-paying property and not against the other properties against which execution has issued. There is no obligation on the landlord to do that: he may for reasons best known to himself proceed to execute against other properties, and, if he did, he would not have the advantage of the provisions of the Bengal Tenancy Act with regard to a rent decree and would be thrown back into the position of having the money decree in execution of which he could sell the property of the joint family only in those

circumstances under which a joint family property would be liable. I would have no hesitation in coming to the conclusion in this case that the plaintiffs' case failed but for one point. Whereas the appellate Court has dealt primarily and almost exclusively with the question of whether the proceedings were fraudulent, the trial Court under issue 9 dealt to some extent with the question of whether the decree bound the joint family property. It is with regard to the finding of the trial Court on issue 9 that it seems to me the only difficulty in the case arises. The trial Judge observed:

It will not do for defendant to urge that Ramdahin being the malik the decree is binding against all the members because Ramdahin was not sued as such.

3. If the learned Munsif meant that Ramdahin was sued in his personal capacity and not in the capacity of karta of the joint family, then of course the matter is concluded in favour of the plaintiffs. But there seems a possibility at any rate of the learned Judge misunderstanding the position, and that what he meant was merely that Ramdahin was not sued as karta of the family. Now the position is this. It is quite unnecessary for a plaintiff, in an action in which he wishes to obtain a decree binding upon the joint family property, to state in his pleadings that he is suing the defendant as the karta of the family. It is perhaps better if he did so but it is not necessary, as I have said. Now if the plaintiff sues the karta of the family without mentioning the other members of the family and without joining them as parties to the suit, the position is this: that he may obtain a decree which decree is not liable to be set aside merely because the other members of the family were not joined. But, as their Lordships of the Privy Council have pointed out, in those circumstances they (the other members) are entitled to have an opportunity in a suit of their own to raise the question of whether the decree and its execution binds the joint family property and that decision would depend upon the ordinary considerations of Hindu law which are well-known. Now, coming back to the case in hand, as the learned Judge of the trial Court has stated that Ramdahin was not sued as the karta of the family, I think the appellants should have the opportunity of obtaining a decision on that question by the appellate Court.

4. It must be pointed out that the point is not what Ramdahin was described as, but whether it is clear from the pleadings that he was sued merely in his personal capacity. If the learned Judge comes to the conclusion that Ramdahin was sued in his personal capacity the matter will be concluded in favour of the plaintiffs and the decree and the subsequent execution shall not bind the joint family property. But the mere omission to state that Ramdahin was sued as the karta of the family is not conclusive. The intention must be gathered from the pleadings and the subsequent proceedings, and if it is shown that Ramdahin was sued as the karta of the family and, as obviously a decree for payment of rent is a necessity, the property of the family and of the appellants would be involved in such a decree and its execution.

5. The matter will be remanded for the learned Judge to come to a definite

conclusion as to whether the plaintiffs intended to sue Ramdahin as the karta of the family. If the finding is in the affirmative then the plaintiffs' suit fails; if in the negative, the plaintiffs would be entitled to a declaration that the decree and the execution bound the interest of Ramdahin only and not of the plaintiff-appellants. The plaint and the record of the rent suit will be produced before the learned Judge in the Court below. I have considered the matter carefully and have come to the conclusion that, having regard to the very loose manner in which the plaintiffs framed their suit, and the fact that they were obviously asking what in the circumstances of the case has proved to be too much, the appellants should have no costs of this appeal. The remand to the learned Judge is for the determination of the case finally and the case will not be remitted to this Court.