
(1936) 10 PAT CK 0024

In the Patna High Court

Official Trustee of Bengal and Another

APPELLANT

Vs

Basdeo Bhagat and Others

RESPONDENT

Date of Decision : 13-10-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 50

Citation : AIR 1937 Patna 239

Hon'ble Judges : Mohamad Noor, J; Madan, J

Bench : Full Bench

Judgement

Mohamad Noor, J.—These three appeals arise out of a proceeding taken before the Subordinate Judge of Jamtara in the Santal Pargana for execution of two decrees for costs passed by the Privy Council. It appears that Maharaja Ram Ranjan Chakravarty of Hetempur instituted before the Subordinate Judge of Dumka a mortgage suit against the Ghatwal of the Handwe Estate. The suit was transferred to the Court of the Subordinate Judge of Bhagalpur. During the pendency of the suit the Maharaja died and his four sons, Kumar Satyaniranjan Chakravarty, Mahima Nirnanjan Chakravarty, Sada Nirnanjan Chakravarty and Kamla Nirnanjan Chakravarty, who are described in the decree of the trial Court as executors of the estate of the Maharaja, were substituted as plaintiffs in his place. The suit was decreed.

2. There were two appeals in this Court against the decree, one on behalf of the mother of the Ghatwal and the other on behalf of his widow. They were dismissed by this Court and the matter was taken up to the Privy Council. There the mortgage suit was entirely dismissed on the ground that the Handwe Estate being a Government Ghatwali was not alienable. The judgment of their Lordships is reported in Satya Narayan Singh v. Satya Nirnanjan Chakravarty AIR 1924 PC 5. The defendants were awarded costs against the plaintiffs. Later on there was an application for review before their Lordships which was also rejected and again there was a decree for costs. These two decrees are respectively dated 28th November 1923 and 26th January 1926. These decrees, at the instance of

Basdeo Bhagat and others, who are respondents in Appeal No. 104 of 1935, and appellants in Appeals Nos. 105 and 126 of 1935, and who had attached the two decrees in execution of their own decree, were transferred for execution to the Court of the Subordinate Judge of Jamtara on 3rd April 1928.

3. After the required papers were forwarded to that Court, two out of the four sons of the Maharaja of Hetempur, who were judgment-debtors in the Privy Council decrees, namely, Mahima Niranjana and Kamla Niranjana, died, the former on 2nd October 1929, and the latter on 6th May 1931. Application for execution on behalf of the attaching creditors for execution of the Privy Council decrees was filed before the Jamtara Court on 17th June 1931. It was against the two surviving sons of the Maharaja and also against the Official Trustee of Bengal as trustee of the estate of the deceased Mahima Niranjana and Biswa Niranjana, the son of Kamla Niranjana. Various objections to the execution of the decrees were raised on behalf of the Official Trustees of Bengal and Biswa Niranjana, the chief of them being that the execution could not be taken against them as they were personal representatives of the deceased judgment-debtors and did not represent the estate of the Maharaja which was represented by the surviving executors of his estate.

4. Arguments were heard by Mr. Sen, the Subordinate Judge, in these objections on 22nd April 1932, but judgment was not delivered by his successor till 10th January 1935. In the meantime the other two sons of the Maharaja also died, Satya Niranjana on 23rd August 1933, and Sada Niranjana on 4th December 1933. An application was made on behalf of the decree-holders (attaching creditors) for bringing Brahma Niranjana and Braj Bala Debi, son and widow respectively of Satya Niranjana, and Pankajini Debi, widow of Sada Niranjana, on the execution record. Notices were issued and various objections to the execution were made on their behalf also, the most important of them being that they could not be proceeded against in the Jamtara Court.

5. Mr. Radha Raman Ghosh, who in the meantime had succeeded Mr. Sen as Subordinate Judge of Jamtara, heard arguments on the objection of the representatives of Satya Niranjana, and Sada Niranjana and by one judgment dated 10th January 1935 disposed of the objections of the Official Trustee of Bengal and Biswa Niranjana and also of the representatives of Satya Niranjana and Sada Niranjana. He disallowed the objection of the Official Trustee of Bengal and Biswa Niranjana, but allowed that of the representatives of Satya Niranjana and Sada Niranjana, holding that they could not be substituted in the Jamtara Court. Appeal No. 104 of 1935 is directed against that part of the order by which the objection of the Official Trustee and Biswa Niranjana was disallowed. Appeal No. 105 of 1935 is on behalf of the decree-holders (the attaching creditors) against that part of the order by which the learned Subordinate Judge refused to order the substitution of the names of the representatives of Satya Niranjana and Sada Niranjana on the ground that he had no power to do so and that such application should be made before the Court which passed the decree and in this particular

case before the learned Subordinate Judge of Bhagalpur whose duty it is to execute the decrees of the Privy Council. It appears that after the order refusing the substitution of the representatives of Satya Niranjana and Sada Niranjana was passed the attaching creditors wanted to proceed against the remaining judgment-debtors only. This was disallowed and as the decree-holders took no further steps in the case the learned Subordinate Judge dismissed the application for execution on 1st April 1935 and Appeal No. 126 of 1935 is directed" against this dismissal. Now most of the objections taken on behalf of the Official Trustee and Biswa Niranjana had by the time the judgment was delivered become infructuous. The chief objection of these two was that execution could only proceed against the surviving executors and not against them who were the personal representatives of the deceased executors. But by that time the surviving executors were also dead.

6. It is now conceded by all those who appeared on behalf of the representatives of the deceased sons of the Maharaja of Hetampur that they are in possession of his estate and do now represent the estate. The only point urged on behalf of the appellant in Appeal No. 104 of 1935 which is also involved in Appeal No. 105 of 1935 is whether the learned Subordinate Judge of Jamtara could execute the decree after the judgment-debtors against whom the certificate for execution was granted by the Bhagalpur Court were dead, that is to say, whether he could proceed with the execution against the representatives of the deceased judgment-debtors. Reliance has been placed on the decision of their Lordships of the Privy Council in *Jang Bahadur v. Bank of Upper India, Ltd.* AIR 1928 PC 162. In that case their Lordships pointed out the change which was introduced in 1877 in the CPC where the words "to the Court which passed the decree" were added. These words were not in the earlier Code of 1859. Their Lordships have held that it is irregular for the Court which has not passed the decree to proceed with the execution against the representatives of a deceased judgment-debtor as under the provisions of Section 50, Civil P.C., the application for such execution is to be made to the Court which passed the decree. Their Lordships have, however, held that if the judgment-debtor waived the objection or acquiesced in execution, the proceedings are not void because there is no want of jurisdiction. In my opinion the learned Subordinate Judge has rightly pointed out that the questions of acquiescence or of waiver can only arise when steps have been taken for execution and the Courts are called upon to decide whether the steps taken should stand or should be set aside. We are at a stage when no execution has been issued. When it is brought to the notice of the Court that a certain procedure is irregular, and when the proceedings can be regularised by applications to the proper Court, there is no reason why the Court should allow the irregular proceeding to continue. The learned advocate for the decree-holders (attaching creditors) has, however, urged that there was an acquiescence or waiver on the part of the judgment-debtors and therefore they are not entitled to raise this objection. Now, so far as the representatives of the judgment-debtors who died after this filing of the execution petition are concerned, namely those of

Satya Niranjan and Sada Naranjan, they had definitely and specifically objected that execution could not proceed against them in the Jamtara Court. So far as the other two persons are concerned, namely the Official Trustee and Biswa Niranjan, it is true that they did not specifically raise this question before the lower Court. But they raised various objections to the execution and it cannot be said that they allowed the execution to proceed and waived the objection or acquiesced in execution. The objection was specifically mentioned in their grounds of appeal to this Court. We see no reason why we should allow the irregular proceedings to continue.

7. The result, therefore, is that Appeal No. 104 of 1935 is allowed only on the ground that execution could not be taken in the Jamtara Court without a fresh order by the Bhagalpur Court and that the decree-holder, if he be so advise 1, should take steps before that Court. The other objections on behalf of the appellants which have been disallowed by the learned Subordinate Judge were not pressed before us. On the same ground Appeal No. 105 of 1935 is dismissed, and so also is Appeal No. 126 of 1935 as the execution cannot proceed without a fresh order of transfer by the Bhagalpur Court. Under the circumstances of the case we make no order for costs. At the hearing of the appeal the appellants of 104/35 wanted to place before us some more papers which, though not formally on the record of the present proceedings, are connected with them, as Court papers. This was objected to on behalf of the decree-holders. In view of our finding it is not necessary to refer to those documents and no order need be passed on the petition of the appellant of Appeal No. 104 of 1935.

Madan, J.

8. I agree.