
(1969) 12 OHC CK 0012
In the Orissa High Court
Case No : Misc. Case No. 5 of 1962

Padmalav Das and Others

APPELLANT

Vs

Official Liquidator, Puri Bank Ltd. (In Liquidation)

RESPONDENT

Date of Decision : 03-12-1969

Acts Referred:

Banking Regulation Act, 1949 — Section 45U

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 90

Citation : AIR 1971 Ori 75 : (1971) 41 CompCas 1050

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : M. Mohanty, for the Appellant; J. Rath, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patra, J.—This is an application filed by Padmalav Das, Madan Mohan Das and Gagan Behari Das, all sons of late Satrughna Das

praying that, in the circumstances mentioned therein, certain properties attached and sold in Execution Case No. 1 of 1955 in execution of a

decree brought by the Puri Bank against the judgment-debtor Krushna Chandra Das, should be excluded from attachment and sale on the ground

that the properties belong to them and that the said Krushna Chandra Das had no interest in those properties. One Ananda Das died leaving

behind him two sons, namely, Satrughna Das and Gandharba Das and Mukta Dei his widow. The three petitioners and the deceased judgment-

debtor Krushna Chandra Das are the sons of Satrughna Das. Krushna died leaving behind him his widow Bimala Dei and two sons, namely,

Niranjan and Manoranjan. Krushna was the original judgment-debtor in Execution Case No. 1 of 1955. On his death on 12-10-1960, his mother

Mukta, widow Bimala and two sons Niranjan and Manoranjan have been substituted as his legal representatives in the execution proceedings.

Satrughna is now dead. The case of the petitioners is that sometime before the decree was obtained against Krushna Chandra Das by Puri Bank,

he was separated from his father and brothers and relinquished his share in the joint family properties on receiving Rs. 400/- from Satrughna Das

and that thereafter he had no connection with the family members nor had he any interest in the joint family properties. Whatever debts he had

incurred from Puri Bank were incurred by him after his separation and for his personal business transactions and therefore the petitioners are in no

way liable to discharge the same. In the joint family properties which stand in the name of Ananda Das, the common ancestor, Satrughna had eight

annas interest and after the death of Satrughna, the entire eight annas interest had devolved on the petitioners. But in execution of the decree which

the Puri Bank had obtained against Krushna Chandra Das, the entire eight annas interest had been attached and put up for sale. It is to set aside

the sale that the present application has been filed.

2. The decree-holder Puri Bank has filed counter stating that the present petition filed by the petitioners on 14-12-1962 is virtually one under

Order 21, Rule 58, C.P.C. to release the disputed properties from attachment made in Execution Case No. 1 of 1955 on 21-12-1955 and as

such the petition is barred by limitation under the rules framed under the Banking Companies Act, 1949. The allegation of the petitioners that

Krushna relinquished his share in the joint family properties on receiving Rs. 400/- from Satrughna is also denied, it is further contended that the

business in connection with which Krushna had incurred loans which resulted in the decree under execution was a joint family business and all the

members of the joint family including the petitioners are liable to discharge the debt. It is further averred that what was "the right, title and interest of

the judgment-debtor" in the properties and it is this interest that has been put up for sale. The interest, if any, the petitioners may have in the

properties had neither been attached nor put up for sale and as such they have no cause of action to file the petition which consequently is liable to

be dismissed.

3. The first question for consideration is whether Krushna had separated from his

father Satrughna and his brothers and relinquished his share in the joint family properties on receiving Rs. 400/- from his father. In support of this contention, three witnesses were examined on behalf of the petitioners including P. W. 1 Madan Mohan Das who is petitioner No. 2. He stated that a document was executed by Krushna in that connection but that document has not been filed in Court. According to him Anadi Swain and Gopinath Naik were present at the time of separation and are alive. But Gopinath has not been examined. Anadi Swain has been examined as P.W. 2 and he admitted that he did not see the payment of Rs. 400/- by Satrughna to Krushna. According to him, no document was executed at that time to evidence relinquishment by Krushna of his share in the joint family properties. P.W. 3 Pranakrushna Barik, the family barber of Satrughna's family stated that he was present when Krushna separated from his father and the latter paid him money in lieu of his share. According to him, one Ekrarnama was executed at that time and was scribed by one Alekh Charan Mohapatra. But Alekh has not been examined and no such Ekrarnama has been filed in Court. According to P.W. 3, Anadi P.W. 2 was present at the time of payment, but the latter admitted that he was not present. Thus the evidence let in on the petitioner's side is full of discrepancies and is so unsatisfactory that no reliance can be placed on the same. That apart, there is evidence to show that even after the alleged separation, the petitioners and their sisters lived with Krushna at Cuttack. The school register produced on behalf of the opposite party shows that Krushna acted as the guardian of the petitioners while the latter were studying at Cuttack. It is another circumstance which goes against the petitioner's case. It may be mentioned here that in Misc. Case No. 4 of 1962 wherein the mother, wife and the minor sons of Krushna were the petitioners, a similar contention was advanced by them that Krushna had separated from the family and had no share in the joint family properties and that contention was also negatived by the learned Company Judge and affirmed in appeal by a Bench of this Court to which I was a party. In view of the circumstances stated above, I must hold that the petitioners have failed to prove their contention on this point. It must therefore follow that Krushna Chandra Das had a share in the joint family properties.

4. The contention of the decree-holder that the family business in connection with which Krushna had incurred loan from the Puri Bank was a joint family business and that as such all the members of the joint family including the petitioners are liable to discharge the debt has not been satisfactorily established.

5. In the writ of attachment what has been attached is described as the interest of the judgment-debtor in certain properties. It is this property so attached that has been put up for sale. In view of the fact that the properties are not partitioned, it was not possible to give more precise details of the interest which Krushna had in the same. This therefore does not appear to me to be such a lacuna as to invalidate the sale. But I would not base my decision in this case on this ground, because in my opinion, the application is bound to fail on other grounds.

6. Rules under the Banking Companies Act, 1949 had been made by the High Court in exercise of the powers vested in them by Section 45N

read with Section 45-U of the Act. So far as civil proceedings are concerned. Rule 13 with which we are concerned runs as follows:

No claim under Rule 58 or application under Rules 90, 91 and 100 of Order 21 shall be entertained if not made within 15 days from the date of

attachment or sale or delivery of property, as the case may be and no such claim or application shall ordinarily be admitted, unless the Court is

satisfied that prima facie it is a fit case for admission.

Section 45-N and Section 45-U occur in Part III-A of the Act and Section 45-A which also occurs in Part III-A runs as follows:--

The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the

Companies Act, 1956"" or the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) or any

other law for the time being in force or any instrument having effect by virtue of any such law; but the provisions of any such law or instrument in so

far as the same are not varied by, or inconsistent with, the provisions of this part or rules made thereunder shall apply to all proceedings under this

Part.

It is true that Order 21, Rule 58, C.P.C. does not provide for any specific period of limitation, but even if there had been any specific period

provided in the Civil Procedure Code, it is manifest from a reading of Section 45-A of the Act that Rule 13 would prevail over any corresponding

provision in the Civil Procedure Code. The petitioners have not indicated under which provision of law the present application is filed. But if it is

viewed as under Order 21, Rule 58, C.P.C., it is clear that the application is beyond time and is therefore liable to be dismissed.

7. Mr. M. Mohanty appearing for the petitioners contends that this is an application under Order 21, Rule 90. C.P. C. This cannot also be treated

as one under Order 21, Rule 90, not only because by the time the application was filed on 14-12-1962 the sale had not taken place (the sale took

place on 3-1-1963), but also because the petitioners cannot be said to be persons whose interests are affected by the sale. The petitioners are

persons who claim title paramount to that of the judgment-debtor and they are therefore not persons whose interests are affected by the sale.

Again, the petitioners were not parties to the decree. If they think that their properties are being sold for the judgment-debt of another person, they

cannot disregard Rule 58 of Order 21, C.P.C. and apply after the sale under Rule 90 of that order, treating the case as one of irregularity in

publishing or conducting the sale (vide AIR 1941 45 (Privy Council) Looked at from any point of view therefore, the application is not

maintainable.

8. In the result, the application fails and is dismissed with costs. Hearing fee Rs. 50/-.