
(1948) 08 AHC CK 0032
In the Allahabad High Court

Panchoo Jolaha

APPELLANT

Vs

Mohammad Ismail and Another

RESPONDENT

Date of Decision : 17-08-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1949 All 263

Hon'ble Judges : Seth, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Seth, J.—This is a judgment-debtors' appeal. The necessary facts to bring out the point for decision are as follows:

2. The decree was for possession of a piece of land. It appears that there was a cattle-shed standing upon the piece of land of which possession had been ordered to be delivered. The decree-holder put the decree into execution and applied for possession of this piece of land to be delivered to him. In the course of the execution, the cattle-shed was also demolished and the decree-holder was given possession over the vacant land. The judgment-debtors applied to the Court complaining against the conduct of those responsible for execution on the ground that the decree did not provide for the demolition of the cattle-shed, and that the judgment-debtors have suffered a loss by the demolition of the cattle shed in the course of the execution. They accordingly claimed compensation for the loss suffered by them by having been deprived of the materials of the cattle-shed. The claim for compensation was made by an application u/s 47, Civil P.C. The executing Court as well as the lower appellate Court have both come to the conclusion that the question of compensation is not a matter falling within the purview of Section 47, Civil P.C., and that the remedy of the judgment-debtors, if there be any, is by means of a regular suit.

3. The learned Counsel for the appellant contends that the decision of the Courts

below on this point is erroneous. His contention is that this is a matter in which the decree has been executed in excess and that his claim in substance is a claim for restitution of the benefit derived by the decree-holder in excess of what he was entitled to under the decree. In support of this contention, he has placed reliance on the decision of this Court in *L. Madho Lal and Another Vs. L. Duli Chand and Another*, . The contention of the learned Counsel does not appear to be sound because this is not a case in which the judgment-debtors are seeking to recover from the decree-holder any benefit derived in excess of what they were entitled to. Cases in which the refund or restitution is claimed are in their nature different from the cases in which compensation is claimed for the loss suffered by a judgment-debtor. From the fact that a judgment-debtor has suffered loss it does not necessarily follow that the decree-holder has derived any benefit. It cannot be said that the act of demolishing the cattle-shed was any part of the execution of the decree. Had it been a case in which the decree-holder had applied for possession of the piece of land by demolition of the structures standing upon it and the execution had been ordered to take place in that manner, it would have been a case in which it could be said that the loss was suffered by the judgment-debtors in execution of the decree. As it happens, on the facts of this case, what actually took place was that in the course of the execution, the court officer and the decree-holders combined together to commit an act of tort in demolishing the cattle-shed and they were not carrying out either the orders of any Court or the terms of any decree. For such an act of tort, the only remedy available seems to be a suit. The question raised by the judgment-debtors is not a question relating to the execution, satisfaction or discharge of the decree.

4. There is no force in this appeal. It is accordingly dismissed with costs.

5. The prayer for permission to file a Letters Patent appeal is refused.