
(1937) 12 CAL CK 0013
In the Calcutta High Court

Raja Birendra Nath Ray Bahadur

APPELLANT

Vs

Purna Chand Nahata and Others

RESPONDENT

Date of Decision : 01-12-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 34, 47

Citation : AIR 1938 Cal 767

Hon'ble Judges : Nasim Ali, J; Bartley, J

Bench : Full Bench

Judgement

Nasim Ali, J.—This appeal arises out of a proceeding u/s 47, Civil P.C., and is against an order of the first Court of the Subordinate Judge of Pabna, dated 7th March 1936 rejecting the appellant's application for execution of a decree under the provisions of Order 21, Rule 34, Civil P.C. That rule is in these terms:

Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

2. The petition of the appellant for execution contains a prayer in terms of Rule 34 of the Code. The questions for determination therefore are : (1) whether the decree is a decree for execution of a document, and (2) "whether the judgment-debtor has neglected-or refused to obey the decree. As regards the first point it appears that the decree was made by consent in a suit for recovery of possession of certain lands. The petition-of compromise, in terms of which the consent decree was made shows that the claim for khas possession of the plaintiffs in the suit, who are the respondents in these appeals, was given up in respect of a portion of the disputed lands as the appellant agreed to take a permanent lease of those lands at a certain rent. It further appears from the petition of compromise that the parties agreed that either the decree would be registered or formal leases would be executed. The petition of compromise also states that each of the terms of the compromise is a consideration for the whole. Under

these circumstances it cannot be said that the execution and registration of the lease in respect of a portion of the disputed land was not a matter relating to a suit. In view of the definite statement in the decree that the parties are to execute and register the leases it cannot be said that this portion of the decree is not operative. The learned Subordinate Judge has observed that an order under Order 21, Rule 34 can be made only when a decree for execution of a document is made in a suit for specific performance of contracts. There is no foundation for such a view in the rule itself. The rule simply contemplates that there should be a decree for execution of a document. It may be passed in any suit. We are therefore of opinion that there is a decree for the execution of a document in this case within the meaning of Order 21, Rule 34, Clause (1) of the Code.

3. The next question is whether the respondents neglected or refused to obey the decree. The case of the respondents is that they did not neglect or refuse to obey the decree and that they have no objection to the execution and registration of the leases, provided the map which forms part of the decree is relayed in the locality before the leases are executed in order that there may be no dispute about the identity of the leasehold lands in future. This being the position taken up by the respondents, we are of opinion that the proper order to make in these appeals is to set aside the order of the learned Subordinate Judge refusing the appellant's application under Order 21, Rule 34 of the Code and to send the case back to him for dealing with the appellant's application under Order 21, Rule 34, Civil P.C., according to law, and we order accordingly.

4. The appellant is directed to prepare the draft of the kabuliyat in terms of the petition of compromise making the map and the field book, which have been made part of the consent decree, part of the kabuliyats. He is also directed to insert into the draft leases the same description of the demised lands as they are given in the consent decree. The respondents are also directed to submit similar drafts of the corresponding pottas. These drafts are to be submitted to the Court within three months from the date of the arrival of the record of these appeals in the lower Court. The learned Subordinate Judge will thereupon proceed to dispose of the application of the appellant for execution in accordance with Sub-rules 2, 3, 4 and 6 of Order 21, Rule 34, Civil P.C. The learned Subordinate Judge is also directed to take into consideration the transfers of landlords' interest which have taken place after the consent decree. Parties will bear their own costs in Appeals Nos. 342 and 343 of 1936. There will be no order for costs in the other appeals. Let the record be sent down as early as possible.

Bartley, J.

5. I agree.