
(1915) 11 AHC CK 0035
In the Allahabad High Court

Ram Nath Tewari

APPELLANT

Vs

Musammat Genda

RESPONDENT

Date of Decision : 04-11-1915

Acts Referred:

Citation : AIR 1915 All 351 : 31 Ind. Cas. 564

Hon'ble Judges : Henry Richard, C.J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Henry Richard, C.J.—This appeal arises under the following circumstances. The judgment-debtor brought a suit claiming a declaration that a sale-deed made by his mother and a brother's widow was not binding upon him, on the ground that it was an alienation made by Hindu widows without legal necessity. The Court held that there was legal necessity to the extent of Rs. 66 and it accordingly decreed the plaintiff's suit, but subject to the condition that he should within one month pay into Court the sum of Rs. 66. The plaintiff failed to pay the money into Court within the month. He did, however, pay in on a subsequent date and the Court accepted the money. Thereupon, the defendant Musammat Genda made an application for execution of the decree, contending that inasmuch as the plaintiff had failed to comply with the condition, the plaintiff's suit stood dismissed with costs. The application was to recover the costs that would be payable to the defendant in the ordinary course upon the plaintiff's suit being dismissed "with costs". The plaintiff raised objections. These objections have been disallowed by both the Courts below. The plaintiff has appealed. The decree was drawn up in the following form: "It will be established and declared that the sale-deed executed by defendants Nos. 2 and 3 in favour of defendant No. 1, is not binding upon the plaintiff; possession will be delivered to the plaintiff by dispossession of defendant No. 1 on condition of paying into Court Rs. 66 within one month; in case of default the plaintiff's suit will stand dismissed." A schedule of costs follows. The schedule shows what the costs of each side would

be if the condition had been duly fulfilled. In other words, the schedule is based on the assumption that the money would be paid in within the time specified. It will thus be seen that there was no award of costs to the defendant in the event of the condition not being fulfilled. The decree simply says the suit shall stand dismissed." It is somewhat unfortunate from the plaintiff's point of view that he should lose the benefit of the decree in his favour simply by reason of his failure to pay the money into Court within the time specified. The defendant, however, is entitled by law to the benefit caused by the default of the plaintiff. On the other hand, the Court executing a decree can only execute the decree as it stands. If the decree was not in conformity with the judgment, it was the duty of the person interested in the decree to have it brought into conformity. In my opinion, the decision of the Court below was not correct and ought to be reversed. I hold that the defendant is not entitled to execution for costs. The other point in the case is connected with the effect of the omission of the plaintiff to pay the Rs. 66 into Court within the time specified. I think this is not an objection which, properly speaking, arose on the defendant's application to execute the decree for costs. If the plaintiff contends that he has still a decree in his favour notwithstanding that he did not pay the money in within the time, he should make an application for the execution of the decree and then the Court will decide the point. If again, the plaintiff considers that he is still entitled to get an extension of time for payment of the money into Court and that the Court has power to grant him such extension, he should make an application for such extension of time and the question can be decided. I wish to say that I am not deciding either of these two last mentioned questions. I allow the appeal, set aside the decree of both the Courts below and remand the case to the Court of first instance through the lower Appellate Court with directions to dispose of the same, having regard to what I have said above. I make no order as to the costs of the appeal.