

(1924) 04 PAT CK 0007

In the Patna High Court

Ramcharan Singh and Others

APPELLANT

Vs

Jangbahadur Singh and Others

RESPONDENT

Date of Decision : 10-04-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 53(6), 151, 47

Citation : AIR 1924 Patna 696

Hon'ble Judges : Ross, J; Das, J

Bench : Full Bench

Judgement

Das, J.—On the 10th of May, 1919 the plaintiffs obtained a decree as against defendants Nos. 1 to 8 for Rs. 659-6-8. Two and half years before that, that is to say on the 14th of December, 1916. Bhuban Gope who was cited in the action as defendant No. 9 obtained a decree as against the present plaintiffs for Rs. 10-8 9. Bhuban Gope attached in execution of his decree the decree obtained by the plaintiffs against the defendants and proceeded to execute that decree under the provisions of Order 21, Rule 53. On the 21st of June, 1919 a petition of satisfaction was filed in the executing Court apparently under the provisions of Order 21, Rule 2 in which it was stated that the whole of the money due by the defendants to the plaintiffs upon the decree of the 10th of May, 1919 was paid to Bhuban Gope. On the 14th of August, 1919, the plaintiffs proceeded to execute their decree of the 10th of May, 1919. It was brought to the notice of the Court that there was a petition of satisfaction and the Court came to the conclusion that the plaintiffs' decree had been satisfied and dismissed the execution case. On the 11th of May, 1920, the suit out of which the present appeal has arisen was instituted by the plaintiffs as against their judgment-debtors defendants Nos. 1 to 8, as also against Bhuban Gope. They stated in their plaint all the relevant facts in connection with the case and asserted that there was a fraudulent conspiracy between their judgment-debtors and Bhuban Gope as a consequence of which they have suffered damages to the extent of Rs. 676-10-11. The Courts below had to decide two questions first whether the suit was barred by the provisions of Section 47 of the CPC and secondly, whether the

conspiracy had been established entitling the plaintiffs to the reliefs claimed by them. The Court of first instance came to the conclusion that Section 47 did not constitute a bar to the plaintiff's suit but held on the evidence that the fraudulent conspiracy was not established by the plaintiffs and, in that view dismissed the plaintiff's suit as against defendants Nos. 1 to 8, but decreed the suit as against Bhuban Gope. Bhuban Gope did not appeal but the plaintiffs appealed to the lower appellate Court, their view being that they should have got a decree not only as against Bhuban Gope but also as against defendants Nos. 1 to 8. The learned Judge in the Court below came to the conclusion that Section 47 of the CPC was a complete bar to the plaintiffs' suit and he expressed an opinion that as the plaintiffs' decree was still an operative decree the plaintiffs might even at that stage apply for execution of their decree. He declined to go into the question of fraud raised by the plaintiffs and in the view that Section 47 constituted a bar to the plaintiffs suit dismissed the Appeal. The plaintiffs then applied to the executing Court asking that Court to vacate the order of the 3rd of September, 1919 under the provisions of Section 151 of the Code and to allow execution of their decree. The Courts below in the exercise of their inherent jurisdiction have recalled the order of the 3rd of September, 1919 and have allowed execution to proceed. The defendants in the suit have moved this Court under the provisions of Section 115 of the Code. This application is Civil Revision No. 233 of 1923. The plaintiffs, dissatisfied with the decree passed by the lower appellate Court holding that their suit is barred under the provisions of Section 47 of the Code have appealed to this Court and the appeal is Second Appeal No. 302 of 1922.

2. The question raised in Civil Revision No. 233 of 1923 is a short one and may be disposed of at once. The order of the 3rd of September, 1919 was dated and signed by the Judge. That being so, there was no power in my opinion in the Court in the exercise of its inherent jurisdiction to recall that order. Order 20, Rule 3 is perfectly clear on this point. That Rule runs as follows: "The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed shall not be altered or added to, save as provided by Section 152 at on review." It has been urged by the learned Vakil appearing for the opposite party that the Court has inherent power to do justice between the parties, especially where there has been an abuse of the process of the Court. In my opinion there is no inherent power in the Court to do that which is prohibited by the Code. Order 20, Rule 3 constitutes a distinct prohibition on the part of the Court to recall an order except u/s 152 or on review. In my opinion there was no power in the Court to recall the order of the 3rd of September, 1919. Civil Revision No. 233 of 1923 must accordingly be allowed and the orders of the courts below must be set aside. The petitioners are entitled to their costs. Hearing fee two gold mohurs.

3. I now come to the appeal. In my opinion the decision of the learned Judge is erroneous and ought to be set aside. There is no challenge in this suit upon the order of the 3rd of September, 1919 and as a matter of fact no challenge could

possibly be thrown on that order. Bhuban Gope had undoubtedly attached the decree obtained by the plaintiffs as against the defendants. They were entitled to proceed under the provisions of Order 21, Rule 53 of the Code and they did proceed under the provisions of that order. In my opinion there was nothing to prohibit the adjustment between them out of Court. It was stated in the Executing Court that the matter had been adjusted between them. That being so there was no option in the court but to pass the order which it did on the 21st of June 1919. It was suggested to us by the learned Vakil appearing for the appellants that there is a distinct prohibition upon the judgment debtors adjusting the decree out of court and he relied upon Order 21, Rule 53 Clause (6) of the Code. In my opinion the argument is unsustainable. Rule 53 provides that when a decree-holder attaches a decree obtained by his judgment-debtor against a third party, the attachment shall be made by a notice by the Court which passed the decree sought to be executed to the holder of the decree sought to be attached prohibiting him from transferring it or charging the same in any way. This is the notice upon the holder of the decree sought to be attached, and, after receiving the notice, it is impossible for the holder of the decree sought to be attached to transfer or charge the decree in any way. In the case before us the holders of the decree sought to be attached are the plaintiff. Paragraph 6 authorizes the court to give notice of the attachment of the decree to the judgment-debtor bound by the decree attached and it provides that no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof either through the court or otherwise shall be recognised by any court so long as the attachment remains in force. The object; of paragraph 6 is to prevent any adjustment of the decree between the holder of the decree sought to be attached and the judgment-debtor to the prejudice of the holder of the decree sought to be executed. Now the holder of the decree sought to be attached in this case, as I have mentioned are the plaintiffs and the judgment debtors are defendants Nos. 1 to 8 and Clause (6) of the Order 21, Rule 53 would only prevent an adjustment of the decree as between the plaintiffs and defendants Nos. 1 to 8 to the prejudice of Bhuban Gope who is the holder of the decree sought to be executed. That being so. paragraph 6 does not assets the argument of the learned Vakil for the appellants. In my opinion the decree obtained by the plaintiff as against defendants Nos. 1 to 8 having been attached by Bhuban Gope and that decree having been put into execution by Bhuban Gope there was no option in the Executing Court but to pass the order which it did on the 21st of June 1919.

4. How then does the matter stand? Obviously the question now raised by the plaintiffs could not have been agitated in a proceeding under the provisions of Section 47 of the Code. The plaintiffs' cause of action is that this decree has been satisfied by reason of a fraudulent conspiracy between defendants Nos. 1 to 8 and Bhuban Gope. This obviously is a matter which could not have been agitated under the provisions of Section 47 of the Code. In my opinion, provided the plaintiffs establish that there was a conspiracy between defendants Nos. 1 to

8 and Bhuban Gope, they are entitled to succeed in the action. The learned Judge in the court below has not expressed any opinion on the question of fact raised by the plaintiffs in the plaint. Obviously we cannot express any opinion on this question because this question must in my opinion be decided by the learned Judge.

5. In my opinion the decision of the learned Judge is erroneous and ought to be set aside. I allow the appeal, set aside the decree passed by the court below and remand the case to that court for decision according to law. The appellants are entitled to the costs of this appeal. The costs incurred in the court below will abide, the result and will be disposed of by the learned Judge.

Ross, J.

6. I agree.