

(1944) 08 PAT CK 0009
In the Patna High Court

Rameshwar Lal Jhunjhunwalla and Others	APPELLANT
Vs	
Triloke Chand and Another	RESPONDENT

Date of Decision : 04-08-1944

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 38, 47
Limitation Act, 1963 — Article 182(5)

Citation : AIR 1945 Patna 129

Hon'ble Judges : Shearer, J;Chatterji, J

Bench : Full Bench

Judgement

Chatterji, J.—The question for determination in this appeal is whether the execution of a decree is barred by limitation. The decree under execution is a money decree passed by the second Munsif's Court, Bhagalpur, on 15th May 1935. On 1st June 1936 it was transferred for execution to the Munsif's Court at Madhi-pura. In the latter Court an application for execution (Execution case No. 574 of 1936) was filed on 30th July 1936. This execution case was dismissed on part satisfaction, on 13th March 1937. On 21st February 1940 the decree-holders filed a fresh application for execution (Execution case No. 145 of 1940) in the second Munsif's Court, Bhagalpur, praying for arrest of the judgment-debtor. This application was dismissed for default on 23rd February 1940. On 9th January 1942 the decree-holders filed the present application for execution (Execution Case No. 12 of 1942) in the Munsif's Court at Madhipura after obtaining a new certificate of non-satisfaction from the Bhagalpur Court. The judgment-debtor filed an objection u/s 47, Civil P. C, on the ground that the application was barred by limitation. The learned Munsif held that the application for execution which was filed on 21st February 1940 in the Bhagalpur Court was not an application made to the proper Court, and, therefore, did not save limitation. He proceeded on the assumption that the Madhipura Court did not report the result of execution case No. 574 of 1936 to the Bhagalpur Court, as there was no note to that effect in the execution register. On appeal, the learned Additional District Judge took the same view. Accordingly, he dismissed the

appeal. Hence this appeal by the decree-holders.

2. This appeal originally came up for hearing before Sinha J. who referred it to a Division Bench, because apparently he doubted the correctness of the decision in *Kamakhya Narain Singh v. Kalipado Dutt* AIR 1939 Pat. 289 on which both the Courts below relied. Under Article 182, Clause (5), Limitation Act, the three years period of limitation is to run from the date of the final order passed on an application made in accordance with law to the "proper Court" for execution, or to take some step in aid of execution. In Explanation 2 "proper Court" is defined to mean "the Court whose duty it is to execute the decree or order." Section 38, Civil P. C, provides "A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution." Section 89 lays down under what circumstances the Court which passed a decree may send it for execution to another Court. Section 41 says:

The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

3. Order 21 Rule 6 lays down the procedure to be adopted by the Court sending a decree for execution to another Court. Order 21, Rule 10 provides:

Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

4. In AIR 1989 Pat. 2891 *Wort A. C. J. and Manohar Lall J.*, relying upon Section 88 and Order 31, Rule 10, Civil P. C, held that where a decree has been transferred for execution to another Court, an application for execution of such decree, made after the transfer, to the Court which transferred the decree is not an application to the proper Court and is not, therefore, a "step in aid of execution. Their Lordships also relied upon an earlier decision of this Court in *Jnanendra Nath v. Jogendra Narain* AIR 1923 Pat. 384 and on the Privy Council decision in *Maharajah of Bobbili v. Narasaraju Peda Sinhulu* AIR 1916 P. C. 16. In the case in *Jnanendra Nath v. Jogendra Narain* AIR 1923 Pat. 384 Das J., with whom Adami J. agreed, held, upon a construction of Sections 38 and 39, Civil P.C., that a decree cannot be executed simultaneously in two Courts, that is to say, the Court which passed the decree and the Court to which it sent the decree for execution. Das J. also referred to the Privy Council decision in *Maharajah of Bobbili v. Narasaraju Peda Sinhulu* AIR 1916 P. C. 16 as supporting the view taken by him.

5. In the Privy Council case, 43 I. A. 238 the facts were briefly these: In April 1904 a money decree was obtained in the Court of the District Judge of Vizagapatam. In September 1904, on the application of the decree-holder, the decree was transferred to the Court of the Munsif at Parvatipur for execution. In the latter Court execution was taken out and some immovable property of the

judgment-debtor situated within the local limits of the jurisdiction of that Court was attached. But subsequently without any further order the execution case was dismissed in 1905. No further steps were taken by the decree-holder to get the decree executed by the Munsif's Court, at Parvatipur. In December 1907 the decree-holder filed an application in the Court of the District Judge at Vizagapatam praying, (i) that the property which had already been attached by the Munsif's Court at Parvatipur be sold and (2) that notice u/s 248, Civil P. C., 1882, be issued to the judgment-debtor. No action, however, was taken on this application. Again in April 1910 the decree-holder filed in the Court of the District Judge an application for execution of the decree by sale of the immovable property which had been attached by the Munsif's Court at Parvatipur. Till then the latter Court had not reported the result of the execution to the Court of the District Judge. The judgment-debtor objected to the execution on the ground that it was barred by limitation as the previous application filed before the District Judge had not been presented to the proper Court. This objection was upheld by the Privy Council. Their Lordships said:

As the decree of 5th April 1904, had by order of the Court of the District Judge been sent on 30th, September 1904, to the Court of the Munsif of Parvatipur for execution by the latter Court, and as the copy of the decree with the non-satisfaction certificate was not returned to the Court of the District Judge until 3rd August 1910, and as the petition of 13th December 1907, was for execution of the decree by sale of the immovable property of the respondents which was within the local limits of the jurisdiction of the Munsif's Court, their Lordships, having regard particularly to Sections 223, 224, 228, and 230, Civil P.C. 1882, are satisfied that when that petition of 13th December 1907, was presented to the Court of the District Judge that Court was not the proper Court to which the application to execute the decree by sale of the immovable property which had been attached by the Court of the Munsif should have been made, and that proper Court to which that application should have been made was the Court of the Munsif of Parvatipur, as that was the Court, whose duty it then was to execute the decree so far as it could be executed by that Court.

6. Section 223 of the Code of 1882 corresponds to Sections 38, 39 and 41 of the present Code, Section 224 to Order 21, Rule 6, Section 228 to Section 42 and Section 230 to Order 21, Rule 10. Though apparently the main ground of their Lordships' decision was that the District Judge had no jurisdiction to sell the property which had been attached by the Munsif, their Lordships also emphasised the fact that the Court of the Munsif of Parvatipur was "the Court whose duty it then was to execute the decree so far as it could be executed by that Court," This Privy Council; decision has been regarded by this Court in the aforesaid cases in 2 Pat. 2472 and AIR 1939 Pat. 2891 as an authority for the proposition that after a decree has been transferred for execution to another Court, that Court and not the transferring Court is the proper Court to which an application for execution should be made.

7. A contrary view, however, has been taken by the Calcutta High Court in *Rajani Kanta Pattadar Vs. Kazi Saiyed Golam Mahiuddin and Others*, , by the Bombay Court in *Fatehchand Rampratap v. Jitmal Rupchank* AIR 1929 Bom. 418 by the Lahore High Court in *Kanti Narain v. Madan Gopal* AIR 1935 Lah. 465, by the Allahabad High Court in *Makkhan Lal Vs. Mt. Bhagwana Kuer*, and by the Rangoon High Court in *K.K. Deb v. N. L. Choudhary* AIR 1927 Rang. 258 . The effect of these decisions is that simultaneous executions in the Court which passed the decree and the Court to which it has transferred the decree for execution are permissible. In the Calcutta case *Mukherji Ag. C. J. and Guha J.* sought to distinguish the Privy Council decision on the ground that in that case the application for execution which was relied upon to save limitation was made to the District Court, asking for sale of land which was within the jurisdiction, not of the District Court but of the Munsif's Court to which the decree had been transferred for execution and that, therefore, by that application the District Court was asked to do what it was not competent to do. In the Calcutta case, however, the actual point for decision was whether the Court which passed the decree, after it has transferred the decree for execution to another Court, is competent to transfer it again. *Mukherji J.* himself in an earlier case, *J.C. Galstaun Vs. F.E. Dinshaw and Others*, , said:

Now the power to make an order for simultaneous or concurrent execution of a decree in more Courts than one is not the same as the power to make an order for execution after a decree is no longer on the file of the Court having already been transferred to another Court for execution.

8. Then referring to Order 21, Rule 10, Civil P. C, his Lordship said:

But the words of Order 21, Rule 10, Civil P. C, favour the view contended for on behalf of the judgment-debtor and that is how the law is generally understood. Moreover there are weighty considerations that make it the more acceptable view.

9. In the Bombay case *Madgavkar J.*, sitting alone, sought to distinguish the Privy Council decision on the same ground. But in that case the main question for consideration was whether a decreeing Court which transfers execution is deprived of all jurisdiction until the Court to which it has transferred the decree has certified the result of execution u/s 41, Civil P. C. The following observation made by the learned Judge is very pertinent:

Similarly, because a decreeing Court may not be a proper Court in which a certain step-in-aid of execution may be taken, it does not follow that it is therefore a Court entirely without jurisdiction in respect of the decree which it has itself made and of a darkhast which it has itself transferred wholly or in part to another Court.

10. His Lordship relied upon the Privy Council decision in *Saroda Prasad Mullick v. Luchmeeput Sing* (70) 14 M. I. A. 529 in support of the proposition that a decree may be executed in more than one Court simultaneously. But in that Privy

Council case what was actually decided was that the Court which passed the decree may transfer it to several Courts simultaneously for execution. In the Lahore case also the Privy Council decision in *Maharajah of Bobbili v. Narasaraju Peda Sinhulu* AIR 1916 P. C. 16 was distinguished on the same ground by Jai Lal J. who delivered the opinion of the Full Bench. It is, however, important to observe that Skemp J. referred to Order 21, Rule 10, Civil P. C., and held that after a decree has been transferred for execution to another Court, the proper Court to which an application for execution should be made is the transferee Court and not the transferring Court. In the Allahabad case the Privy Council decision was distinguished on the ground that

it does not touch the point of concurrent execution in more than one Court at one and the same time.

11. It was held in that case that

Where a decree passed by one Court is transferred to another for execution, the decree-holder is entitled to make an application to the former Court inasmuch as concurrent execution of decrees is permissible.

12. The actual question for decision, however, was one of jurisdiction and not of limitation. There was no reference to Order 21, Rule 10, Civil P. C. In the Rangoon case the Privy Council decision in *Maharajah of Bobbili v. Narasaraju Peda Sinhulu* AIR 1916 P. C. 16 was explained in these words:

It does not, however, seem to me to follow from, the fact that their Lordships held that the District Court was not the proper Court to order the sale of property which had been attached by the Munsif that their Lordships intended to lay down a general rule that a decree cannot be executed in two Courts at the same time. Such a rule would be directly contrary to their Lordships' own decision in *Saroda Prasad Mullick v. Luchmeput Sing* (70) 14 M.I.A. 529.

13. The actual decision in the case was that:

There is nothing in the present Code, any more than there was in the Code of 1859 which prohibits the sending of a decree for execution to two Courts at the same time.

14. Mr. G. C. Mukherji on behalf of the appellant has also referred to the decision of this Court in *Ram Sumran Prasad v. Ram Bahadur* AIR 1923 Pat. 224 and *Dwarkadas Gobindram Firm v. Saligram Rekhraj Firm* AIR 1939 Pat. 144. In the former case there is the following observation of Mullick J.:

indeed on principle there seems to be no difference between a concurrent execution after transfer in another Court and a concurrent execution in the Court in which the decree was passed.

15. The actual point for decision in that case, however, was whether the same Court is competent to allow a decree-holder to prosecute two concurrent applications for execution of the same decree. The point now under consideration

did not at all arise, and there was no reference to Section 38 or Order 21, Rule 10, Civil P. C. In the other case it was held that

a Court when it transfers a decree for execution does not thereby altogether lose control over the decree and is quite competent to recall it. Therefore, an application made to the Court transferring the decree to recall the execution proceedings is a step-in-aid of execution made in accordance with law before the proper Court.

16. Fazl Ali J. (as he then was) who delivered the judgment to which Agarwala J. agreed, said:

The point on which all the Courts are agreed is that the Court when it transfers the decree for execution does not thereby altogether lose control over the decree, but may still pass certain orders in connexion with execution. For instance, it has power to stay execution, to make an order for simultaneous execution by another Court and to decide an objection as to limitation if referred to it by the Court to which the decree has been transferred for execution.

17. But with reference to the expression "proper Court" in Explan. 2 to Article 182, his Lordship said:

The expression "proper Court" has been somewhat loosely denned in Explan. 2 of Article 182 as the Court whose duty it is to execute the decree. It was contended before us on behalf of the appellant that this definition was wide enough to include a Court which has transferred a decree for execution to another Court. In view, however, of the authorities on the subject it appears to me to be not permissible to give to this expression the wide meaning attributed to it on behalf of the appellant.

18. This decision, therefore, is of no assistance to the appellant. Rather the last-quoted observation supports the respondent. It has also been argued by Mr. Mukherji that the cases in 2 Pat. 2472 and A. I. R. 1939 Pat. 2891 are distinguishable, because in the present case the Madhipura Court had dismissed the execution case No. 574 of 1936 on part satisfaction. But in the Privy Council case in Maharajah of Bobbili v. Narasaraju Peda Sinhulu AIR 1916 P. C. 16 the Munsif's Court at Parvatipur had dismissed the execution case, and yet their Lordships held that that was the proper Court to which the subsequent application for execution, which was relied upon to save limitation should have been made. The question before us turns on the meaning of "proper Court" as given in Explan. 2 to Article 182. Having regard to the provisions of Order 21, Rule 10 and to their Lordships' observation in the case in Maharajah of Bobbili v. Narasaraju Peda Sinhulu AIR 1916 P. C. 16 that the Court of the Munsif of Parvatipur was the Court whose duty it then was to execute the decree so far as it could be executed by that Court," I am not prepared to hold that the decisions of this Court in Jnanendra Nath v. Jogendra Narain AIR 1923 Pat. 384 and Kamakhya Narain Singh v. Kalipado Dutt AIR 1939 Pat. 289 are not correct. It may be mentioned here that this last case was followed by this Court in

Bishundeo Narain v. Raghunath Prasad AIR 1940 Pat. 677 in which the judgment was given by Meredith J., with" whom Wort J. agreed. As at present advised, I find no sufficient ground to refer the matter to a Full Bench. I would, therefore, dismiss this appeal. But in the circumstances, I would make no order for costs.

Shearer, J.

19. I agree.