
(1953) 06 CAL CK 0036
In the Calcutta High Court
Case No : Appln. in re, Suit No. 958 of 1940

Ranjit Shaw

APPELLANT

Vs

Samarendrajit Shaw and Others

RESPONDENT

Date of Decision : 19-06-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : AIR 1953 Cal 797

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Ganguli, for the Appellant; P.N. Ghosh, Attorney, for the Respondent

Judgement

P.B. Mukharji, J.—This is the plaintiff decree-holder's application for leave to execute the decrees obtained by him against the Official Receiver in Rent Suits Nos. 546 of 1952, 548 of 1952, 549 of 1952, 654 of 1952 and 329 of 1950, all of the Second Munsif's Court, Howrah, by attachment and sale of the properties of Sri Birendrajit Saha, Sri Ranjit Saha and Sri Samarendrajit Saha, the tenants of the applicant, and which properties still continue to be in the possession of the Official Receiver. The applicant also asks that the costs of and incidental to this application be added to his decrees and be costs in the execution proceedings.

2. There is no opposition from the judgment-debtors to this application. But the Receiver has appeared through Mr. P. N. Ghose. Solicitor. The objection on behalf of the Receiver is that this application was not necessary because leave had already been granted to the applicant as plaintiff in those suits to sue the Receiver. It is contended that such leave to sue for rents include's and covers leave to execute the rent decree against properties in the hands of the Receiver. As the point was of some importance I adjourned the- matter to Court, although it came on Chamber Summons.

Mr. Ganguli, the Solicitor who appears for the applicant, draws my attention to a decision of Buckley J. in -- "Morris v. Baker" (1904) 52 WR 207 (A). There it

appears that almost an identical point was raised at the Bar and decided by the Court. At page 208 of that report Buckley J. observes :

"The question is "whether the leave thus given extended beyond proceeding to judgment, to the issue of a writ of possession. In my opinion it did not. The true way of looking at the matter is this : The Court being in the possession of land or chattels by a Receiver is asked to allow proceedings to be taken by one person against another to determine the title. Leave is given. The party who succeeds ought to say to the Court, "this is my land, these are my chattels, but the fruit" of my victory are in your possession, and I want them." If there is nothing more in the case the court would give leave for possession. But the party is not entitled, as against the receiver, to obtain possession without leave -- that is to say, without the consent of the court, in whose possession the property is.

Take another case. Suppose that an action is sued to judgment. Doe's that always in itself give the right to issue execution? The answer is that it does not. When judgment has been obtained the court has, in certain cases, to be approached again, in order to see whether it will give leave to issue execution or whether there are net other circumstances to which the court ought to have regard. It does not follow that because judgment has been obtained, some other person is not entitled to rights in the property in respect of which leave is to be asked to issue execution. It is the duty of the court, while the property is, as it were, "in medio". to see that the rights of all parties in respect of it are protected."

3. On this ground Buckley J. came to the conclusion that the leave which was given to issue a writ for the recovery of possession did not extend beyond leave to try the question who was entitled to judgment for possession. It must be made clear that the whole question before Buckley J. turned on the construction of the words "leave to issue a writ for the recovery of possession" which occurred in the order of the Master of 17-9-1903 in that case.

4. In this case before me the leave of the court was granted to sue the receiver for the "recovery of arrears of rent" and I think that the principles of the decision in -- "Morris v. Baker (A)," and the reasons given therein should be followed and applied here.

5. I will however add my own exposition of the law on the point. When a court grants leave to a litigant to sue the receiver the scope of such leave depends entirely on the terms of the court's order granting the leave. Whether, in a particular case, such leave to sue the receiver includes leave to execute against the assets in the possession of the receiver must therefore be determined by reference to the terms in which the leave was granted.

The usual form in which leave is ordinarily granted in this court is only for leave to sue the receiver may be for possession, or for arrears of rent or other reliefs as the case may be. That, in my judgment, will not permit execution against the properties in the hands of the receiver without further leave from the court. It is

quite possible that in a proper case the leave may be given in such wide term"s that it will cover even leave to execute. Normally, however, no court will grant leave in such wide terms because leave to execute against property in the hands of the receiver may have to depend on considerations arising subsequent to the grant of the initial leave to Sue the receiver and therefore, it will be for the court at the later stage to see whether leave -should be given to execute against properties in the hands of the receiver.

6. There will, "therefore, be an order in terms of the Summons. I grant leave to the applicant to execute his decrees against properties in the possession of the receiver. The applicant will also be entitled to costs of this application to be added to his decrees and treated as costs in execution proceedings. I assess the costs of this application at Rs. 68/-.