

(1951) 03 CAL CK 0020

In the Calcutta High Court

Case No : Appeal from Original Order No. 123 of 1948

Sayed Md. Hossain

APPELLANT

Vs

Binapani Dasi

RESPONDENT

Date of Decision : 08-03-1951

Acts Referred:

Bengal Tenancy Act, 1885 — Section 93, 94, 95
Limitation Act, 1908 — Article 182, 20

Citation : (1952) 2 ILR (Cal) 71

Hon'ble Judges : Sen, J;Chunder, J

Bench : Division Bench

Advocate : Amarendra Nath Bose and Chandra Sekhar Bhowmick, for the Appellant;Hiralal Chakravarti and Rabindranath Bhattacharya, for the Respondent

Final Decision : Allowed

Judgement

Sen, J.—This appeal is from an order passed by the Subordinate Judge, Birbhum, in execution proceedings.

2. The facts which need be stated for the purposes of this appeal briefly are these: There was a tenure called the Khanpur estate, which was held by the judgment-debtors. An application was made u/s 93 of the Bengal Tenancy Act for the appointment of a Common Manager. The court, acting under the provisions of Section 94 of the Bengal Tenancy Act, directed the parties to appoint their own Common Manager. They failed to do so and the court in accordance with the provisions of Section 95 of the aforesaid Act appointed a Common Manager. The patnidar defaulted in payment of rent and the darpatnidar Binapani Dasi paid it. Then she brought a suit against the Common Manager and the owners of the Khanpur estate for the realisation of the dues and a declaration that they formed a charge on the property. The Common Manager alone appeared and contested the suit and the other owners of the Khanpur estate" did not appear.. A compromise petition was filed by the Common Manager on his behalf only and the suit was decreed in terms of that compromise as against the Common

Manager who was Defendant No. 1. The owners of the patni not having appeared another decree was passed against them ex parte. It will now be necessary to state the terms of these decrees which are somewhat peculiar. The Common Manager was directed to pay the amount in eleven annual instalments and in default of payment of one instalment it was directed that the property could be sold in execution of the decree on compromise. So far as the owners of the patni, were concerned, the ex parte decree directed them to pay the entire decretal amount within six months. The decree against the owners was made final on February 17, 1940. The decree-holder then applied for execution of the decree on January 17, 1948. by way of a tabular statement against the owners of the tenure only and in the tabular statement she stated that the decree to be executed was the final decree passed on February 17, 1940. Now, that decree was the decree passed against the owners of the patni. There was no final decree passed against the Common Manager as he was given eleven years within which to pay. The judgment-debtors Nos. 2 to 9 are mentioned in the tabular statement as the persons against whom the execution is sought thereby excluding the Common. Manager. Thus it is abundantly clear that execution was sought not against the Common Manager but against the owners of the tenure and that it was sought in respect of the final decree passed against the owners of the tenure and not against any decree passed against the Common Manager.

3. The judgment-debtors Nos. 2 to 9 objected to the execution and their objection inter alia was that execution was barred by limitation. The court held that it was not so barred. Hence this appeal by the judgment-debtors.

4. The only point argued is whether the execution of the decree against the arrears is barred by limitation. We have heard a great deal of arguments from Mr. Chakravarti appearing on behalf of the Respondent and, however much we may sympathies with his client, we have no option but to hold that the court below was wrong and that the execution of the decree is barred by limitation. As stated before, the final decree was passed on February 17, 1940, and the application for execution was filed on January 17, 1948. The period of limitation for executing a decree is three. years unless that period can be extended by steps taken in execution such as are mentioned in Article 182 of the Indian Limitation Act. No such steps were taken or relied upon. Mr. Chakravarti's main argument was that the Common Manager was the agent of the judgment-debtors Nos. 2 to 13 and that as such agent the decree passed in his favour in a way protected those judgment-debtors. He first argued that as the Common Manager had made certain payments he would get an extension of time by virtue of the provisions of Section 20 of the Indian Limitation Act. That argument he had to abandon. The payment which saves limitation u/s 20 of the Indian Limitation Act must be signed and in the handwriting of the person making it on behalf of somebody else. Here, it is not in the handwriting nor is it under the signature of the Common Manager. Secondly, payment made by a third person would save limitation only if he were an agent duly authorised in this behalf by the person owing the money, It was argued by Mr. Chakravarti that the Common Manager

was such agent. There are two objections to this. First of all,-and this is the most vital objection-the Common Manager appointed by the court is in no sense an agent of the owners of the property over which he is appointed a Common Manager. This has been decided by this Court in the case of Brindaban Chandra Mitra v. Atul Krishna Basu (1935) 40 C.W.N. 92, where the other cases are exhaustively reviewed. "With great respect to the learned Judge we entirely agree with his view. Again, if he were an agent, there is nothing to show that he was an agent duly authorised to make this payment on behalf of the" debtors. The debtors nowhere authorised him to make this payment. He was an officer appointed by the court. The court may authorise him to make the payment but that would not affect the debtors, nor would it enlarge the period of limitation of which the debtors can take the benefit. Mr. Chakravarti then placed certain arguments before us which we are not fully able to appreciate. He says that the ex parte decree and the compromise decree coalesced. We do not understand how they coalesced nor do we appreciate how if they have coalesced limitation can be saved. A compromise decree after all is merely a contract superimposed with the seal or the authority of the court. Now, there was no contract between the Common Manager and the Defendants against whom execution was sought. The court may have granted the Common Manager eleven years within which to pay, but the benefit of this long period would not be available to the Defendants Nos. 2 to 9 as they were not parties to the contract. Further, it would not be available to them because in the preliminary decree it was clearly stated that the non-appearing Defendants would have to pay the decretal amount within six months and that if they did not do so, the property would be liable to sale forthwith.

5. In our opinion, although it is unfortunate that Binapani Dasi is being deprived in this application of the fruits of her decree, we have no option but to hold that the execution of this decree against the Appellants is barred by limitation. She may or may not have other remedies as against the Common Manager but we guard ourselves against expressing any opinion on that point.

6. The result, therefore, is that the order of the court below is set aside and the appeal is allowed with costs throughout.

Chunder J.

7. I agree.