
(1924) 06 PAT CK 0024
In the Patna High Court

Shaikh Abdul Hadi

APPELLANT

Vs

Musammat Kabultunnissa

RESPONDENT

Date of Decision : 17-06-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 38, 39

Citation : 80 Ind. Cas. 901

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

Bench : Division Bench

Judgement

Das, J.—It has been contended before us that the Subordinate Judge of Gaya had no jurisdiction to sell the property which was in Patna. It must be remembered that the decree which was being executed in the Gaya Court was a mortgage decree and that the mortgage comprised properties situated both in Gaya and Patna. In these circumstances the question arises whether the Subordinate Judge of Gaya had jurisdiction to sell the property in Patna. No doubt the provisions of Section 38 of the Code read with those of Section 39 indicate the acceptance of the view by the legislature that no Court can execute a decree in which the subject-matter of the suit or of the application for execution is property situated entirely outside the local limits of its jurisdiction. But as was pointed out by Mookerjee, J. in *Begg Dunlop & Co. v. Jagannath Marwari* 11 Ind. Cas. 417 : 14 C.L.J. 228 : 39 C. 104 : 16 C.W.N. 402. "In cases of decrees for sale of mortgaged properties an exception has been recognized."-- See *Meseyk v. Steel & Co.* 14 C. 661 : 7 Ind. Dec (N.S.) 439; *Kartick Nath Pandey v. Telukdhari Lall* 15 C. 667 : 7 Ind. Dec. (N.S.) 1028 *Gopi Mohan Roy v. Doybaki Nundun Sen* 19 C. 13 : 9 Ind. Dec. (N.S.) 455; *Tincouri Debya v. Shib Chandra Pal Chowdhury* 21 C. 639 : 10 Ind. Dec. (N.S.) 1057; *Lahman Pundeh v. Maddan Mohun Shey* 6 C. 513 : 7 C.L.R. 521 : 5 Ind. Jur. 414 : 3 Ind. Dec (N.S.) 333 and *Jahar v. Kamini Debi* 28 C. 238 : 5 C.W.N. 150. Sir W. Comer Petheram in the case in *Meseyk v. Steel & Co.* 14 C. 661 : 7 Ind. Dec (N.S.) 439 clearly indicated the principle upon which the Court acts in cases of this nature. He pointed out that a mortgage-decree "is practically a decree for specific

performance of the contract between the mortgagor and mortgagee" and where that is so" the authority given by Section 19 of the CPC must include the authority to make an order of this kind, that the property shall be sold, and to direct the made in which the sale shall take place." In my opinion, the authorities are conclusive on this point. It makes no difference that the property at Gaya had been sold at a previous execution case. The original authority remains and the Gaya Court could execute that authority by directing the sale of the Patna property. It is also contended that the Gaya Court could not direct its peon to serve the sale processes in Patna. I can find no merit whatever in this argument.

2. The result is that the order passed by the learned Subordinate Judge must be affirmed and this appeal must be dismissed with costs.

Ross, J.

3. I agree.