

(1945) 12 PAT CK 0008
In the Patna High Court

Sm. Parbati Debya and Others

APPELLANT

Vs

Bhaskar Samantra

RESPONDENT

Date of Decision : 06-12-1945

Acts Referred:

Citation : AIR 1947 Patna 233

Hon'ble Judges : Varma, J

Bench : Division Bench

Judgement

Varma, J.—This is an appeal on behalf of the wife and sons of the assignee of a decree-holder. It has come to this Court a second time. The question involved is whether there was a proper assignment of the decree to Hare Krishna Ramanuj Das. The trial Court held that there was a proper assignment; but the lower appellate Court held that it was not. In second appeal the case was sent back by this Court on 10-3-1942, to dispose of the matter on a consideration of the effect of the documents Exs. B-1 and B-2 (of this Court) and also EX. A (of the trial Court). Exhibit B-1 is a petition of the original decree-holder, Parmanand Das, and EX. B-2 is a petition by the assignee of the said decree-holder. The petitions have been set out in the judgment of the Court below. Exhibit B-1 is as follows:

I obtained a decree against Bhaskar Samantra in the above suit by compromise for Rs. 425 on 19-5-1937. I have sold the decree to Harekrishna Ramanuj Das of Jagannath Ballabh Math for Rs. 400. Hence it is necessary to substitute the name of Harekrishna Ramanuj Das as purchaser after deleting my name from the decree and he becomes the malik and possessor of the decree after acquiring all my rights thereto and he is entitled to realise the decretal dues and the interest according to the compromise along with the costs from the judgment-debtor and from the properties of the judgment-debtor which have been attached before judgment. The attachment of the properties before judgment subsists till the realisation of the entire dues. So it is prayed that in view of the above circumstances my name be cancelled from the decree and in my place the name of Harekrishna Ramanuj Das be substituted as decree purchaser. 26-6-1937.

2. The other petition, which was by the predecessor in interest of the present appellants, runs as follows:

On 19-5-1937 my vendor Parmananda Das plaintiff has obtained a decree against Bhaskar Samantra for Rs. 425. The said decree-holder Parmananda Das having sold the entire decretal dues for a consideration of Rs. 400 I am the malik by virtue of the said purchase. I present this petition and pray that in place of Parmananda Das plaintiff my name be substituted as decree-purchaser. 30-6-1937.

3. The lower appellate Court has referred to these documents and also to the decisions refer, red to in the order of remand, and holds that no particular form of writing is required to effect an assignment of a decree; but looking at the two petitions reproduced above, he says that they refer to some past transaction and cannot be held to be such writing as would point to an assignment of the decree in question. I am afraid, on a reading of the two petitions it is clear that the transaction referred to therein relates to the decree in question. In his petition, the original decree-holder, Parmanand Das, says:

I obtained a decree against Bhaskar Samantra in the above suit.... I have sold the decree to Harekrishna Ramanuj Das.... and he becomes the malik and possessor of the decree after acquiring all my rights thereto.... So it is prayed that in view of the above circumstances my name be cancelled from the decree and in my place the name of Harekrishna Ramanuj Das be substituted as decree purchaser.

4. I have underlined (here italicised) the important portion of the quotation. Even if there was no assignment before, the decree was duly assigned by this document, and the assignment is acclaimed by Harekrishna Ramanuj Das in his petition (Ex. B-2). On a reading of these two documents themselves, and also on looking at Ex. A of the trial Court, I am clearly of opinion that a case of assignment has been made out. I would, therefore, allow this appeal, set aside the order, of the lower appellate Court and restore that of the trial Court. The appellants are entitled to costs throughout.