

(1924) 05 CAL CK 0003
In the Calcutta High Court

Srinath Chatterjee and Another

APPELLANT

Vs

Kedar Nath Rai and Others

RESPONDENT

Date of Decision : 08-05-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : 82 Ind. Cas. 255

Hon'ble Judges : Pearson, J;Graham, J

Bench : Division Bench

Judgement

1. This is an appeal against an order of the Subordinate Judge of Nadia, disallowing objections filed by the judgment-debtors in an execution case u/s 47, Civil Procedure Code.

2. A suit in ejectment had been brought against the owners of certain properties represented by one Charu Chandra Ganguli, the common manager appointed u/s 95 of the Bengal Tenancy Act. The suit was eventually compromised and decreed accordingly on the 4th February 1921. Upon execution being taken out, objection was taken by the judgment-debtors that the decree could not be executed because Charu Chunder Ganguli did not represent the estate on the date of decree and also because the leave of the District Judge was not obtained for the compromise.

3. On behalf of the decree-holders a preliminary objection was raised in the Court below that the application was not maintainable u/s 47, Civil Procedure Code, in the execution stage the contention being that a separate suit might lie for the purpose of questioning the validity of the decree, but that the Executing Court could not go behind the decree. The learned Subordinate Judge on a consideration of the authorities held that the objections could not be determined in an execution proceeding, and that only those questions which would render a decree void ab initio, so as to affect the jurisdiction of the Court, could be gone into. He accordingly upheld the preliminary objection.

4. It has been urged on behalf of the appellants that the learned Subordinate Judge erred in so deciding, and that if the decree was a nullity, as it is maintained it was, the Executing Court was entitled to go behind it and to refuse to execute it. In support of this view reference has been made to the cases of Narendra Bahadur Chand v. Gopal Sah 20 Ind. Cas. 506 : 17 C.L.J. 634 , and Jungli Lall v. Laddu Ram Marwari 50 Ind. Cas. 529 : 4 P.L.J. 240 ; (1919) Pat. 105 (F.B.). Those cases are however distinguishable from the present one inasmuch as in both instances the decree was held to be a nullity by reason of the fact that one of the judgment-debtors had died and his representatives had not been brought on the record so as to render the decree incapable of execution. That however is not the position here. The point whether an Executing Court can question the validity of a decree was considered in the case of Kalipada Sirkar v. Harimohan Dalal 35 Ind. Cas. 856 : 24 C.L.J. 375 : 44 C. 627 : 21 C.W.N. 1104 , and the view taken was that every order or judgment, however erroneous, is good until discharged, or declared inoperative, and that the Executing Court cannot inquire into the validity, or propriety of the decree. It was pointed out by Mookerjee, J., that a proceeding to enforce a judgment is collateral to the judgment and that therefore no enquiry into its regularity, or validity can be permitted in such a proceeding. At the same time it may be conceded that the proposition, that an enquiry into the validity of a decree is outside the functions of an Executing Court, is subject to the proviso that there is a valid decree in existence which can be executed. It cannot be said in this instance that there was not a valid decree, or that it was incapable of execution. The common manager was not dead, and the decree was obviously capable of execution. The only objections taken were:

(1) That Charu Chandra Ganguly had ceased to be the common manager at the date of the compromise decree

5. and

(2) That under the law the common manager had to obtain the permission of the District Judge to the compromise, and that he had failed to do so.

6. In our judgment these matters were outside the province of the Execution Court and the learned Subordinate Judge was right in the view taken by him, and in giving effect to the preliminary objection.

7. Coming to the merits of the case it is argued that Charu Chandra Ganguly did not represent the estate at the date of decree. Two orders of the District Judge have been placed before us. One is dated the 3rd May 1919 and contains a direction that Charu Chandra Ganguli should make over charge to one Dwijraj one of the estate amlas, who was to look into the former's accounts and himself furnish security for Rs. 1,000, within two months. Probably what was in prospect at that time was that Dwijraj should be appointed as common manager in place of Charu Chandra Ganguli, but however that may be there is nothing in that order from which it can be said that Charu Chandra Ganguli was thereby

discharged: it was at most a step preparatory to his discharge contemplated in the future. There is nothing to show even that any action was taken upon that order by the persons concerned, and matters therefore remained in that position up to the compromise decree on the 4th February 1921. So far there is nothing to show that Charu Chandra Ganguli could not represent the defendants on that date as common manager. Subsequently, however, on the 14th September 1921, another order was passed by the District Judge. He refers to the last order of 3rd May 1919, to the fact that nothing has been done under it, and that Charu Chandra Ganguli has never been properly discharged though he may have ceased to deal with the properties, and he makes a declaration that the common management should be deemed to have come to an end since the 3rd May 1919, and that date is to be treated as the dividing line between the responsibility of Charu Chandra Ganguli on the one hand and Dwijraj on the other. It is argued that this order, therefore, invalidates the decree of the previous February because in terms of the order Charu Chandra is to be taken as having ceased to be common manager in 1919, and, therefore, could not properly be said to represent the defendants at the time of decree. In my opinion this argument can not be supported, because in a matter of this kind I think that it has to be determined by the position at the time of the decree itself, and that that cannot for the present purpose be said to be affected by the subsequent order of September, which was not directed to the matter of the decree at all.

8. Then it is argued that the permission of the District Judge was not given to the compromise. In point of fact permission was given, but upon a petition not of Charu Chandra but of Dwijraj, dated 19th January 1921. The whole matter was before the Court, the learned Judge applied his mind to it, and passed the order. The evidence moreover shows, and there is no reason to disbelieve it, that Srinath Chatterjee, the principal malik among the judgment-debtors, himself took an active part in effecting the compromise. In the circumstances I do not think it can be said that the permission which was actually granted is now to be treated as invalid because the application was made in the name of Dwijraj instead of Charu Chandra.

9. The appeal is dismissed with costs. Hearing-fee two gold mohurs.