

(1920) 05 PAT CK 0020

In the Patna High Court

Syed Amjad Hussain and Others

APPELLANT

Vs

Shyam Lal and Others

RESPONDENT

Date of Decision : 04-05-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48

Citation : 56 Ind. Cas. 1004

Hon'ble Judges : Das, J

Bench : Single Bench

Judgement

Das, J.—This appeal is directed against an order of the District Judge of Gaya allowing execution to proceed and disallowing an objection of the judgment-debtors that execution was barred by limitation. It appears that on the 14th July 1909 the decree-holders presented their second application for execution. On the 14th December the properties were sold in execution of the decree which had been obtained by the decree-holders on the 24th May 1904. On the 13th January 1910 the judgment-debtors applied for setting aside the sale and on the 12th February 1910 the sale was actually set aside and the execution case was dismissed. On the 10th December 1912 the decree-holder presented his third application for execution by a sale of the identical properties which had once been sold. On the 14th December 1909 the judgment debtors objected to this execution proceeding on the ground that it was barred by limitation u/s 48 of the Code of Civil Procedure. While that objection was actually being discussed in the Courts, the execution proceeded and the properties were actually sold in execution of the decree. It was ultimately decided by the High Court on the 21st December 1916 that the decree-holder's application for execution presented on the 10th of December 1912 was not barred by limitation inasmuch as that application was to be regarded as a continuation of the second application for execution. The late Chief Justice of this Court delivering the judgment said as follows: "It may often happen that proceedings taken upon an application for execution remain pending in an original Court or Court of Appeal for several years and may result in an order setting aside a sale of Immovable property

many years after the application for execution was presented and many years after any of the dates indicated in the third column of Article 182 of the First Schedule to the Limitation Act. This has of ten been pointed out by the Courts and in order to get over the difficulty, some Courts have held that a subsequent application should be treated as an application made in continuation of the application made before the sale and other Courts have held that such an application is governed by Article 181 of the First Schedule to the Limitation Act and that the decree-holder is entitled to three years from the date on which the sale is set aside within which to make a further application. It seems certain that the Legislature could not have intended that further execution of a decree should be prevented by the fact that execution proceedings remained pending in the Courts for many years." It seems to me that that decision is based on the fact that the third application for execution was regarded as a continuation of the second application for execution and as it was filed within three years from the date when the sale was set aside, the Court properly regarded the application as within time.

2. Although the question of limitation was discussed, from Court to Court until it was finally decided by this Court on the 21st of December 1916, the execution, as I have said before, proceeded with the result that the properties were sold in pursuance of the petition presented by the decree-holder. That sale was again set aside on the 5th August 1913, that is to say, long before the question of limitation was actually decided by this Court. The present application for execution was filed on the 19th December 1918.

3. It seems to me that this application is clearly barred by limitation. The sale was set aside on the 5th August 1913 and under Article 181 of the Limitation Act the next application for execution should have been filed within three years from the 5th August 1913. It was urged, however, on behalf of the decree holder that as the question of limitation was not finally decided until the 21st of December 1916, it would have been of no use to the decree-holder to present an application for execution until that question was finally set at rest. In my view, this argument is not a sound one. The fact that the question of limitation had not been decided by this Court constituted no bar to the decree holders' proceeding with their application for execution. It was no bar in law and it could not be a bar in fact. There was nothing to prevent the decree-holders from presenting their application for execution asking the Court not to actually deal with it until the question was decided by the High Court. As a matter of fact the question of limitation had been raised by the judgment-debtor as soon as the decree-holders presented their third application for execution on the 10th of December 1912, but notwithstanding the objection raised by the judgment debtor, the decree-holders did proceed with the execution with the result that the properties were actually sold in execution of the decree, a sale which was ultimately set aside on the application of the judgment-debtor. In my view as there was no bar at all to the decree holders' proceeding with their execution at any time within three years from the 5th August 1913, it must be held that their application presented

on the 19th of December 1918 was barred by limitation. I would set aside the judgment pronounced by the learned District Judge and dismiss the application for execution. The appellants are entitled to their costs, which I assess at two gold mohurs.