
(1957) 04 PAT CK 0014
In the Patna High Court
Case No : A.F.O.O. No. 112 of 1953

Syed Mohammad Mehdi

APPELLANT

Vs

Syed Zainuddin Hassan Mirza and Others

RESPONDENT

Date of Decision : 18-04-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 8, 38, 39

Citation : AIR 1957 Patna 654 : (1957) 5 BLJR 666

Hon'ble Judges : Sinha, J;Dayal, J

Bench : Division Bench

Advocate : Lalnarayan Sinha, Akbar Hussain and S. Sarwar Ali, for the Appellant; U.N. Sinha, for the Respondent

Judgement

Dayal, J.—This appeal is by one of several judgment-debtors

2. The facts material for the decision of this case are these :

Nawab Mehdi Begam and others brought Rent Suit No. 13 of 1937 in the Court of the Subordinate Judge, Purnea, as against the judgment-debtors for Patni rent etc. On the 30th. January, 1939, the said suit was decreed with costs. The decree-holders filed execution Cases Nos. 101 of 1941 and 16 of 1946 in the Court of the Subordinate Judge, Purnea, but these were dismissed. In 1951, the decree-holders applied in the Court of the Subordinate Judge, Purnea, for a certificate to be sent to the Court of the Subordinate Judge at Patna for execution of the decree in the above suit.

On the 22nd January. 1951, the Subordinate Judge of Purnea ordered that a copy of the order with a copy of the decree and a certificate of non-satisfaction be sent to the District Judge, Patna. On the 29th January, 1955, the decree-holders filed Execution Case No, 8 of 1951 in the Court of the Subordinate Judge, First Court, Patna, for satisfaction of the decree by attachment and sale of the Milkiat properties and houses of the judgment-debtors. On the 18th December, 1951, the appellant filed an objection petition before the Subordinate Judge, First

Court, Patna, which was numbered as Miscellaneous Case, No. 102 of 1951.

3. Paragraph 3 of the petition reads as follows :

"That the decree under execution was not transferred to this Court for execution and the Court had no Jurisdiction to entertain execution petition and it is liable to be dismissed."

Again, on the 5th April, 1952, the appellant filed an objection petition, the relevant paragraphs of which read as follows:

1. That it will appear from the records of the above-mentioned execution cases that the decrees under execution were transferred to the District Judge of Patna for execution from the Court of the Subordinate Judge of Purnea but the decree-holders did not file execution petitions in the Court of the District Judge of Patna.

2. That the decree-holders have filed their execution petitions in the above execution cases in this Court to whom decrees were not transferred either by the Sub-Judge of Purnea or by the District Judge of Patna and as such this Court had no jurisdiction to entertain them. The petitioner has taken this as one of his objections amongst others in the above miscellaneous cases

3. That from the above it is clear that the execution proceedings have not been started in the District Judge's Court of Patna where decrees were transferred for execution

* * * * 5. That under the circumstances the execution petitions are liable to be dismissed simply on this very ground according to the provisions of law.....

6. That it is necessary that before looking to the ether objections raised.....this petition be heard and considered.

* * * *"

The learned Subordinate Judge, First Court. Patna, by his order dated the 22nd January, 1953, overruled the objection that he had no jurisdiction to entertain the execution case.

4. Being thus aggrieved, the objector-judgment-debtor has filed this appeal.

5. Mr. Lal Narayan Sinha, appearing for the appellant, has contended that, in this case, there was a clear breach of the statutory provisions contained in Section 38 of the Code of Civil Procedure. Section 38 provides :

"A decree may be executed either by the Court which passed it or by the Court to which It is sent for execution."

Mr. Sinha, therefore, contended that either the Subordinate Judge. Purnea who passed the decree or the District Judge, Patna, to whom it was sent for execution had the jurisdiction to execute the decree. Execution by the Subordinate Judge. First Court. Patna was clearly without jurisdiction. Mr. Sinha further contended

that the Subordinate Judge. First Court, Patna could execute the decree if the provisions of Order 21. Rule 8. Code of Civil Procedure, had been complied with. Order 21, Rule 7, Code of Civil Procedure, provides as follows :

"The Court to which a decree is so sent shall cause such copies and certificates to be filed, Order 21. Rule 8 provides:

"Where such copies are so filed the decree or order may, if the Court, to which it is sent is the District Court be executed by such Court or be transferred for execution to any Subordinate Court of competent Jurisdiction."

6. "District Court" under the Beneral, Agra and Assam Civil Courts Act, 1887, refers to the District Judge.

7. Thus, it is clear that, unless the provisions of Order 21, Rule 8, Code of Civil Procedure, had been complied with, the Subordinate Judge, First Court, Patna, had no jurisdiction to execute the decree. The decree-holders could even have obtained an order of transfer from the District Judge, Patna, for execution of the decree by the Court of the Subordinate Judge, First Court, Patna. But no such order was passed. The decree-holders have Placed no materials to show that the provisions of Order 21, Rule 8 of the CPC had been complied with, We also did not find anything on the record to show that the provisions of Order 21, Rule 8 were at all observed.

8. In the case of Debi Dial Sahu v. Moharaj Singh ILR 22 Cal 764 (A), it has been clearly indicated that non-observance of Order 21. Rule 8 goes to the root of the jurisdiction of the executing Court.

9. Even if it be held that non-observance of Order 21, Rule 8, Code of Civil P. C., is a mere irregularity, the position indicated in Section 38 remains. That is, the jurisdiction to execute the decree was then either in the Court of the Subordinate Judge, Purnea which had passed the decree, or it was in the Court of the District Judge of Patna to which the decree had been sent for execution.

10. Mr. U.N. Sinha, appearing for the respondents, has not been able to meet the contention of Mr. Lal Narayan Sinha. He, however, relied on Section 39(1)(b) of the Code of Civil Procedure, which runs as follows :

"The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court -

if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court."

Then he placed the following paragraph from the execution petition :

"That the judgment-debtors are possessed of other properties and most of them are situate within the jurisdiction of the Subordinate Judge First Court, Patna, and therefore your petitioners have got the decree transferred from the Court of

the Subordinate Judge, Purnea, for-execution, attachment and sale of the properties specified below."

He also pointed out that the prayer before the Subordinate Judge of Purnea, was for a certificate to be sent to the Court of the Subordinate Judge, Patna, for execution. Therefore, he argued that the Subordinate Judge, First Court, Patna, had full jurisdiction to execute the decree.

11. But the difficulty in accepting this argument is that the decree was not sent to the Subordinate Judge, First Court, Patna, for execution. In these circumstances, and for the reasons given above, it is impossible to accept this argument.

12. Mr. U.N. Sinha referred to the cases of Inderdeo Prasad Rai Vs. Deonarayan Mahton, , Bhagwan Singh v. Barkat Ram. AIR 1043 Lah 129 (C) and Maharaj Kishore Khanna v. Raja Ram Singh. AIR 1954 Pat. 164 (D). In the case of Inderdeo Prasad Rai (B), it has been held :

"Where a decree is transferred for execution to another Court and the transfer is made under one of the conditions specified u/s 39, the transferee Court acquires its jurisdiction by the transfer. Non-compliance with the provisions of Order 21, Rules 5 & 8, is a mere irregularity, it does not touch the jurisdiction."

This case, in my opinion, is not of any assistance to the respondents because the decree here has not been transferred for execution to the Subordinate Judge, First Court, Patna. It had been transferred to the Court of the District Judge, Patna. Likewise, the case of Sardar Bhagwan Singh, which has been followed in the case of Inderdeo Prasad Raj (B), is equally of no assistance to the respondents. The case of Maharaj Kishore Khanna (D) has also followed the case of Inderdeo Prasad Rai (B), and is consequently not helpful to the respondents.

13. Mr. Lal Narayan Sinha referred to the case of Raja Jagannath Prasad Singh Vs. Sheonandan Sahay, , where it has been held:

"Where the Court which has jurisdiction to execute a decree declines to entertain an application for execution and does not transfer the application to another Court under Order 21, Rule 6, the mere fact that an application for execution is filed in the later Court will not confer on that Court jurisdiction to execute the decree."

The facts of that case undoubtedly are somewhat different from the facts of the present case, but this much is clear that a mere application for execution made in the other Court does not confer jurisdiction on that Court to execute the decree.

14. No question of- waiver arises in this case as the point that the Subordinate Judge, First Court, Patna, had no jurisdiction under the law to execute the decree has been taken at the earliest stage inasmuch as it is mentioned in the objection petition which has given rise to the miscellaneous cases.

15. For these reasons, it appears to me that the order passed by the Court below is clearly erroneous and it must be set aside. In the result, this appeal is allowed with costs: Hearing fee Rs. 32.

16. The execution petition may, therefore, be returned for presentation to the proper Court and the decree-holders, if so advised, may take proper steps in the matter.

Sinha, J.

17. I agree.