
(1925) 02 CAL CK 0043
In the Calcutta High Court

Tara Prasanna Sinha and Others

APPELLANT

Vs

Jnanendra Narayan Bagchi and Others

RESPONDENT

Date of Decision : 16-02-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1926 Cal 86

Hon'ble Judges : Suhrawardy, J; Duval, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This appeal is by all the judgment-debtors, except Judgment-debtor No. 3, against an order passed by the Subordinate Judge of Birbhum, dated the 27th May 1924, overruling the objections made by the judgment-debtors to the execution u/s 47, Civil P.C., The main objection which has been pressed before us is that no notice under Order 21, Rule 22 having been served on Judgment-debtor No. 3 who is not an appellant before us, the entire execution proceedings are void and without jurisdiction and, therefore, the sale effected in these proceedings must be set aside. The decree obtained was for rent in respect of a darpatni under the plaintiffs who are the patnidars. The darpatni was held by Tara Prasanna, Shyama Prasanna and Bazranghi Prosad. On the death of Bazranghi Prosad his widow Sabitri Kumari Barmani (Judgment-debtor No. 3) was treated as his representative. But it is the case of the appellants that the share of Bazranghi Prosad was sold by him to the appellants by a kabala dated the 8th Chaitra 1327. Sabitri Kumari, therefore, had no subsisting interest in the darpatni. The decree-holders described her as one of the judgment-debtors in the execution proceedings probably out of abundant precaution. Notice under Order 21, Rule 22 was not served on Sabitri Kumari. There is no other flaw in the execution proceedings except want of service of notice on Sabitri Kumari. It is urged before us, whether she was or was not a proper party to the execution proceedings, execution having been sought against her, it was the duty of the decree-holders to serve her with notice under Order 21, Rule 22 and their failure to do so vitiated the entire proceedings. No

authority has been placed before us in support of this untenable contention of the appellants; but reliance has been placed upon cases where it has been held that failure of service of notice under Order 21, Rule 22 takes away the jurisdiction of the Court to execute a decree and all subsequent proceedings are null and void. There cannot be any doubt with regard to the correctness of this view. But as has been pointed out in the case of Gurudas Biswas ` Thakamani Dasi 25 C.W.N. 972, the object of the notice evidently is to enable the judgment-debtor to show cause, if any, why the decree should not be executed and also to give him an opportunity of satisfying the decree. This object could not be achieved in the present proceedings as Sabitri Kumari had no subsisting interest in the property at the time of the execution and she was not a person who could show cause against execution or could satisfy the decree. Moreover, subsequent to the order appealed against and passed by the Court below she joined with the other appellants to make four applications for time to pay the judgment-debt in which the judgment-debtors waived their right to take any objection under Order 21, E. 22. Time was granted with the consent of the decree-holder on these applications and had the Judgment-debtor No. 3 herself been the appellant, she might have found it difficult to succeed in these circumstances. As she is not an appellant and as she has no interest in the property against which execution is sought, I think the judgment-debtors have no right to question the execution on the ground that no notice was served on her.

2. Reference may also be made in this connexion to Article 182 of the Indian Limitation Act. There was no notice on Judgment-debtor No. 3 and the present application may be taken as an application for execution against the other judgment-debtors and under Article 182 such an application is treated to be an application against all the judgment-debtors, and, therefore, it is not necessary that notice under Order 21, Rule 22 should be served upon them all: see the case of Krishnaiyah v. Gajendra Naidu [1917] 40 Mad. 1127.

3. Exception has been taken to the execution on another ground, namely, that the decree having been obtained for rent against the original tenants and some of the transferees of the original tenants, it cannot be considered as a decree under the Bengal Tenancy Act. I do not see any reason why this mere fact will deprive the decree of its character as one under the Bengal Tenancy Act. Besides, the appeal is not directed against the validity of the sale, but against the order overruling the objections u/s 47, Civil P.C.

4. This appeal accordingly fails and is dismissed with costs four gold mohurs. Let the record be sent down as early as possible.

Duval, J.

5. I agree with the order which my learned brother proposes to make. The decree arose out of a rent suit and was passed on the 13th December 1922. Among the judgment-debtors Sabitri Kumari, the present judgment-debtor No. 3, was included, but it appears from the petition dated the 27th May 1924, on

which the order now objected to is made, that she had not at the time of the passing of the decree any interest in the property as any interest she might have had from her husband had been sold before her husband's death. When execution was taken out in Rent Execution Oases Nos. 4 of 1923 and 46 of 1924 (the previous execution cases) it appears that she was not mentioned as one of the judgment-debtors against whom the decree was sought to be executed. Consequently it is argued that when she was included in the present application, which is dated the 3rd April 1924, which was made a year and five months after the passing of the decree, it was necessary that notice under Order 21, Rule 22 should be served on her. This no doubt would have been absolutely necessary and the absence of such notice would have made the whole proceeding void, if, as a matter of fact, any relief in actual effect was possible against the lady. But on the admission of the other judgment-debtors, no such relief was possible; nor does she herself object to the execution of the decree. It was a rent-decree and execution was sought by attachment and sale of the property and she could not, therefore, be affected by anything which took place in the execution Court. She, therefore, raised no objection though subsequently, after this order was passed, she was induced to join with the other original judgment-debtors in making applications for delaying the sale. As she had no interest in the property the want of service of notice on her would not affect her in any way and so there can be no ground for allowing the appeal. I agree with my learned brother also on the point as to the decree being a rent and not a money-decree. I, therefore, agree that the appeal should be dismissed.