

(1928) 02 CAL CK 0018
In the Calcutta High Court

Tarak Nath Saha and Others

APPELLANT

Vs

Moti Lal Agarwala and Others

RESPONDENT

Date of Decision : 27-02-1928

Acts Referred:

Citation : AIR 1928 Cal 559 : 117 Ind. Cas. 677

Judgement

1. The application for execution out of which this appeal arises was dismissed on the ground that it contravened Order 21, Rule 15, Civil P.C. We do not see how it contravenes that rule. The decree was made in favour of the applicants and the pro forma defendant in the original suit for a lump sum of Rs. 1,000. On a previous occasion it was held by the Subordinate Judge that the application was barred by limitation. On appeal to this Court that judgment was set aside, and it was held that the application was not barred as it was a joint decree that was sought to be executed by the other decree holders within the period of limitation. The matter was sent back for the decision of the other questions in dispute. This time the Subordinate Judge has held that the applicants have done what is forbidden by Order 21, Rule 15. Order 21, Rule 15 does not forbid anything to be done. It is rather an enabling rule. It enables one or more of the persons in whose favour a decree has been passed to apply for execution of the whole decree for the benefit of them all. Sub-rule (2), Rule 15 provides for safeguarding the interest of persons who have not joined in the application. In the present application the applicants asked in the tenth column for the entire decretal amount being realized by attachment and sale of the immovable properties of the judgment-debtors. In the seventh column they stated that the total amount of the decree was Rs. 1,000. Out of this they deducted one-half share of the pro forma defendant and asked for their own share of Rs. 500. It is hardly necessary to state that a judgment-debtor cannot be harassed by different applications for execution made by different decree-holders for their own shares of the decretal amount. But if some of the joint decree-holders apply for execution with regard to certain portion of the decree giving up the rest making the joint decree-holders parties to the application who do not object to

the application giving up the rest of the decree, we do not see how it can be said that the application is liable to be dismissed. If one decree-holder gives up a portion of his decree the application for execution for the rest cannot be said to be illegal; and in the present case the circumstances amount to that. The present application cannot be held to be contrary to law. The judgment-debtors cannot, however, be harassed by any subsequent application for execution of the balance of the same decree either by the present applicants or by the pro forma defendant who has been made a party to this execution proceeding.

2. The appeal therefore should be allowed and the execution shall proceed on the application made by the appellants with costs to the appellants in both Courts. We assess the hearing-fee at three gold mohurs.