

(1941) 04 PAT CK 0005
In the Patna High Court

Thakur Harkishore Prasad Sinha

APPELLANT

Vs

Babu Loknath Prasad Dhandhanian

RESPONDENT

Date of Decision : 02-04-1941

Acts Referred:

Citation : AIR 1941 Patna 502

Hon'ble Judges : Chatterji, J

Bench : Division Bench

Judgement

Chatterji, J.—This appeal arises out of an execution proceeding. The judgment-debtor is a ghatwal in the Santal Parganas whose ghatwali tenure is governed by Bengal Regn., 29 of 1814 and is inalienable. It is well settled that the surplus profits of such ghatwali tenure which may be left "after the payment of Government revenue, the wages of the chowkidars employed by the ghatwal and other like charges" are available for the satisfaction of decrees obtained "against the ghatwal: Damodhar Narain Singh Vs. Ganga Ram Marwari, and Rajkeswar Deo v. Bunshidhar Marwari (96) 23 Cal. 873.

2. In the present execution case (No. 19 of 1934) which was started in the Court of the Subordinate Judge at Deoghar, the decree-holder prayed for attachment of the surplus profits of the judgment-debtor's ghatwali tenure. In the meantime, in December 1934 the surplus profits were attached by the Government for satisfaction of certain Government demands other than revenue, and the tenure was placed in charge of a receiver, In the said execution case (No. 9 of 1934) the Court ordered that the surplus profits would be made available for the satisfaction of the decree after realization of the Government dues. The Government dues were satisfied in December 1937. Thereafter the surplus profits were attached by the executing Court in the said execution case (NO. 9 of 1934). When the surplus profits were under attachment by the Government the Commissioner of the Bhagalpur Division fixed certain allowances to be paid to the ghatwal, namely Rs. 300 monthly for his maintenance, Rs. 800 annually for puja expenses and Rs. 200 annually for house repairs.

3. In 1939 the rentals of all estates and tenures in the Santal Parganas were reduced by 25 per cent, under Regn. I of 1939 for the purpose of giving relief to the tenants. In consequence of this reduction, the receiver framed a fresh budget in which he reduced the monthly maintenance allowance of the judgment-debtor ghatwal from Rs. 300 to Rs. 250 and the annual allowance for puja expenses from Rs. 300 to Rs. 250 and for house repairs from Rs. 200 to Rs. 100. When the budget was submitted to the Subordinate Judge for sanction, the judgment-debtor took objection to the reduction in his afore said allowances. The learned Subordinate Judge overruled his objections and with certain modifications with regard to other matters he sanctioned the budget as prepared by the receiver. The judgment-debtor appealed against his order to the District Judge of Dumka, who dismissed the appeal. The judgment, debtor has now come up to this Court in appeal.

4. In this appeal the objection is pressed only with regard to the monthly maintenance allowance of the judgment-debtor. The contention raised is that the services to be rendered by a ghatwal being of a public nature, his maintenance allowance should be fixed by the executive authorities, and in the present case the allowance having already been fixed by the Commissioner of the Bhagalpur Division, it could not be altered by the civil Court without the Commissioner's sanction. In the first place, this objection does not appear to have been taken in either of the Courts below. In the next place, the question of what would be the surplus profits available to the decree-holders of the ghatwal must be determined by the Court executing the decree. Whatever is left to the ghatwal out of the income of his tenure "after the payment of Government revenue, the wages of the chowkidars employed by the ghatwal and other like charges" is his personal property and as such liable to be seized and appropriated by the decree-holder. The ghatwal's maintenance allowance and other personal expenses do not come within the expression "other like charges."

5. The Court, however, executing the decree must make provision for the maintenance and other necessary expenses of the ghatwal judgment-debtor. His maintenance allowance cannot be regarded as salary to be fixed by the executive authorities. The surplus profits in the present case being now under attachment by the civil Court, it is that Court which has to determine the amount of surplus profits available to the decree-holder and for that purpose to fix the allowance to be paid to the judgment-debtor for his maintenance and other expenses. The receiver now in possession of the judgment-debtor's estate is under the control and supervision of the executing Court and must therefore prepare the budget with the sanction of that Court.

6. A similar question was raised and decided by this Court in *Bansidhar Shroff and Others Vs. Thakur Ashutosh Deo Ghatwal and Another*, . In that case it was held that when an executing Court is a civil Court, that Court has to appoint a receiver to make an estimate of the collections and expenditure of the estate which he has to submit to the Court for approval and it is the duty of the Court to

pass final orders settling the budget. In the last place, the Commissioner of the Bhagalpur Division fixed the allowances apparently because the surplus profits were attached by the Government and the receiver was appointed for satisfaction of the Government dues. The Government dues have been satisfied and now the surplus profits are under attachment by the civil Court.

7. The allowances which were fixed by the Commissioner, at that time cannot now be binding on the civil Court. It is also faintly contended that the reduction of the maintenance is not justified. But, as the learned District Judge has rightly pointed out, "this is purely a matter of cutting the coat according to the cloth." Sitting in second appeal, I find it difficult to hold that the learned Courts below were wrong in reducing the amount of the maintenance allowance.

8. The appeal is dismissed with costs.