
(1934) 10 AHC CK 0042
In the Allahabad High Court

Thakur Prasad

APPELLANT

Vs

Kasturi Narain Shukla

RESPONDENT

Date of Decision : 29-10-1934

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2

Citation : AIR 1935 All 364

Hon'ble Judges : Bennet, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bennet, J.—This is a first appeal in execution by a decree-holder in the following circumstances:

The decree-holder brought a suit, in the Calcutta High Court against the judgment-debtor and obtained a simple money decree and four minor decrees for different sets of costs. The decree-holder took out execution in Cawnpore of the main decree. During the course of those execution proceedings on the 20th July 1928, the decree-holder gave a document to the judgment-debtor stating that the decree-holder would not take out execution against the person of the judgment-debtor and he would not attach the money due to the judgment-debtor from the B. & N. W. Railway on account of loading and un-loading contracts. The judgment-debtor applied to the Court in Cawnpore to have this document certified as an adjustment of a decree. The Court held that it was not an adjustment of a decree because it did not state that any portion of the decree was satisfied, but merely dealt with the remedies which a decree-holder might enforce under his decree. On appeal by the judgment-debtor that view was upheld by a Bench of this Court on 4th February 1932. Meanwhile the decree-holder applied in a Court at Gorakhpur for execution of one of the decrees for costs by attachment of the money due from the B. & N. W. Railway for the loading and unloading contract. The judgment-debtor objected that the decree-holder was bound by his agreement in Cawnpore of 20th July 1928. The

Gorakhpur Court on 21st February 1930, held that the agreement was binding on the decree-holder and dismissed the application for execution. The decree-holder made an appeal to the High Court. The High Court in the same order of 4th February 1932, considered this appeal also and it held:

Coming to the Gorakhpur appeal we are of opinion that this appeal must also fail. The decree-holder did not raise the plea in the Gorakhpur Court that the agreement was part of a larger agreement. Further he never sought to prove that such was the case. That being so the agreement, dated 20th July 1928, was properly construed by the Court below and it was rightly held to be binding on the decree-holder.

2. That is, this Court held that although the agreement was not an adjustment of the decree which should be certified under Order 21, Rule 2, still the agreement was binding on the decree-holder and the execution Court should recognize that agreement as binding on the decree-holder and refuse execution contrary to the provisions of the agreement. While the appeals were pending before the High Court on 2nd December 1930, the decree-holder applied in Gorakhpur for execution of another of the decrees for costs by attachment of the same money with the B. & N. W. Railway. The same objection was made of the agreement of 20th July 1928, and this was upheld by the Subordinate Judge by an order of 2nd February 1931, ordering the release of the money, but staying execution pending the decision in appeals. On 18th May 1931, the decree-holder made an application to continue his application for execution of 2nd December 1930. On 23rd January 1933, the execution Court passed the present order under appeal in which the Court holds that the order of this Court dated 4th February 1932, is binding on the decree-holder and that it cannot go beyond that order. Learned Counsel contends that the order in appeal of this Court of 4th February 1932, is not binding as *res judicata* on the decree-holder because it was passed in an appeal from the execution of a different decree. Although the decree was different, the decree was passed in the same suit. The difference consists merely in that the two decrees were for different sets of costs. I consider that there is no force in this argument. Even if the order of this Court were not binding as *res judicata* still in my opinion the order of this Court sets out the law to be applied and it is not open to me as a Single Judge to differ from the law as laid down by a Bench of the Court. I may also add that there is no reason to differ. Learned Counsel relied on a Full Bench ruling reported in *Gobardhan Das v. Dau Dayal* 1932 All. 273, which he claimed would show that an agreement which did not amount to an adjustment would not be binding on the parties for the purpose of execution. I do not think that there is anything laid down by this Full Bench to that effect. The question before the Full Bench was whether an order passed by an executing Court substituting a compromise for the decree originally passed was an order which would give a fresh start for limitation as a subsequent order within the meaning of Section 48(1)(b). It was held apparently that the order was not such a subsequent proceeding. That question appears to me to be an entirely different one from the question now before the Court as to whether the

present compromise is binding on the parties. The compromise may be binding and yet the order passed to that effect may not give a fresh start for limitation. I may also note that the compromise in the present case is quite different from the compromise in the Full Bench ruling because the present compromise does not substitute anything for the decree originally passed, but merely deals with the limitation of the methods of executing that decree. It is further argued by learned Counsel that the remedy of the judgment-debtor might be by a suit. I do not consider that that is so because Section 47, lays down that between the parties all questions arising in regard to the execution, discharge or satisfaction of the decree must be determined by the execution Court. The question as regards attachment of certain money and the issuing of a warrant of arrest are certainly questions dealing with the execution of a decree and therefore these questions must be determined by the execution Court and not in a separate suit.

3. For these reasons I consider that there is no force in the arguments for the appellant and I dismiss this appeal with costs.