

## **Daud Beg And Ors. vs Mst. Mahmudi Begam And Ors. on 22 February, 1952**

**Equivalent citations: AIR1952ALL881, AIR 1952 ALLAHABAD 881**

**Author: V. Bhargava**

**Bench: V. Bhargava**

### **JUDGMENT**

V. Bhargava, J.

1. This appeal arises out of proceedings of execution of a mortgage decree. The respondents obtained a decree on the basis of a simple mortgage against one Hakim Beg for sale of the property which was mortgaged. Hakim Beg having died the appellants were substituted as judgment-debtors in the capacity of his legal representatives. When the respondents sought the execution of the decree by sale of the property which was directed to be sold in the decree an objection was filed by the appellants claiming that this property was owned by them in their own right and had never belonged to Hakim Beg so that it was not liable to be sold under the decree. A preliminary point was taken that this objection of the appellants was not maintainable and that the execution Court was not competent to decide it at all. This ground raised against the objection of the appellants was accepted by the lower Court and consequently the objection was dismissed. The appellants have come up to this Court challenging the correctness of the decision of the lower Court.

2. Learned counsel for the appellants has argued that the question whether the property sought to be sold under the decree belongs to the judgment-debtors in their own right or has come to them as legal representatives of the original mortgagor is a question relating to the execution, satisfaction and discharge of the decree and therefore such an objection should have been entertained and decided by the lower Court under Section 47, C. P. C. There is no doubt at all that, if this objection were to be allowed, the property sought to be sold in execution would not be sold but this fact is not sufficient to make it a question relating to the execution, satisfaction or discharge of the decree. This is a case where the decree itself directs the sale of the property. The property is not sought to be proceeded against under any order of the execution Court in exercise of its powers as such. Once the decree itself directed the sale of the property, it is obviously not open to any judgment-debtor to raise an objection that the property is not liable to sale and thus ask for a decision which would have really the effect of nullifying the decree itself. The position would be different if the property which was sought to be sold was not covered by the decree itself and was sought to be proceeded against by the Court in exercise of its powers as an execution Court on the move of the decree-holder. If, for example, the property had been sought to be attached in execution of a simple money decree, the question whether the property is or is not saleable, would be a question relating to the execution,

satisfaction or discharge of the decree. This view of mine finds full support from a Full Bench decision of the Madras High Court in Hamidgani v. Ammasahib, A. I. R. 1941 Mad. 898 (F. B.). It was held therein that "When a person comes into Court in execution proceedings as the legal representative of a deceased party he cannot question the decree which has been passed. If the decree concerns property in which he claims an interest, the decree will not be binding upon him unless he was a party to the suit. If he was not a party to the suit or "(as in this case)" he had been dismissed from the suit his rights will be entirely unaffected and he will be in a position to enforce them in a suit instituted by him for that purpose. The claim of a stranger to the suit who claims as his immoveable property which has been the subject-matter of a decree cannot in law be regarded as being a question relating to the execution, discharge or satisfaction of the decree."

3. Learned counsel for the appellant relied on three decisions of this Court, viz.: Imtiaz Bibi v. Kabia Bibi, 1929 ALL. L. J. 805, Badri Prasad v. Mt. Janki, 1937 ALL. L. J. 13 and Rahim Bukhsh v. Kishen Lal, 1939 ALL. L. J. 211. In my opinion none of these three cases is applicable to the facts of the present case. In all these cases the property which was sought to be sold was attached and sold in execution of money decree. There was no decree directing the sale of the property. In one case the property sold was in excess of the property directed to be sold by the decree. In none of these cases was the property entirely covered by the terms of the decree itself. It was in these circumstances that the Court held that the judgment-debtors had to object to the sale in the execution proceedings under Section 47, Civil P. C. The present case is clearly different from all those cases. The view that is applicable to the present case is that expressed by the Madras Full Bench in Hamidgani v. Ammasahib, A. I. R. 1941 Mad. 898 stated above.

4. In that light the appeal has no force and is dismissed with costs.