

## Newazish Ali Khan vs Raja Bhanu Pratap Singh on 6 February, 1952

**Equivalent citations: AIR1953ALL74, AIR 1953 ALLAHABAD 74**

### JUDGMENT

Malik, C.J.

1. There was a decree for a large sum of money passed by the Civil Judge, Lucknow, on 14-8-1933. It was a simple money decree and various attempts were made to execute the decree. Both the judgment-debtor and the decree holder died and on 10-8-1945, an application was made for substitution of names and for transmission of the decree to the Bahraich Court for execution. The prayer in the application is as follows :

"Jinab Ali sail degreedar mustadai Hai ki awallan hasb Order 21 Qaida 16 (sic) Zabta Dewani bajai Rani Manraj Kuer degreedar ke sail ka nam ba Zumre degreedar qaim farmaya jawe aur hasb dafa 50 Zabta Dewani bajai Nawab Moham-mad Ali Khan Qazilbash madeeun mutwaffi ke warisan qabizan jaidad ashkhash munderja Khata No, 9 darkhuast haza ka nam qaim hokar bad hu kasb dafa 39 certificate intaqali banam Civil Judge Sahib Bahadur Bahraioh bheja jawe aur mutalba munderje ijrai baza, mublikh Rs. 36043-7-3 ba izafa kharcha ijra haza Wa sud ainda wasul kara diye jawen."

2. Certain objections were filed by the other side and these objections were dismissed by an order dated 23-11-1946. An appeal filed to the Chief Court was dismissed on 11-9-1950. On 12-12-46 a certificate under Section 39, Civil P. C. was issued transferring the decree to the Court of the Civil Judge Bahraich for execution. The certificate was received in the Bahraich Court on 16-12-1946. On 30-8-47, an application for execution of the decree was filed in the Court of the Civil Judge, Bahraich, in which the prayer was as follows ;

"Sir, The decree-holder prays that according to Order 21, Rule 54/66, Civil P. C. the immoveable property, the kothis, the houses, and the village mentioned in the list attached to the application for execution of decree, be attached and soil and that Rs. 38522-7-3, the amount due under the decree as detailed below be got realized.

The amount mentioned in the transfer certificate.

Rs.

36071.11-3 Interest from 11-845 to 30-8.47 on Rs. 20304 at 6 p. c. p. a.

Amount of interest Rs. 2450 Grand Total Rs. 38522.78."

A long list of properties was given, by the sale of which the decretal amount was to be realized. An objection was taken that the decree having been passed on 14-8-1933, the application for execution filed on 80-8-1947, was barred under a. 48, Civil P. C., as it was filed more than 12 years after the date of the decree. This objection was disallowed and the lower Court held that the application for execution was within time, as it was in continuation of the previous application dated 10-8-1945. This appeal was filed against the decision of the lower Court and the only point for consideration is whether the application filed on 30-8-1947, was barred under Section 48, Civil P. C.

3. Respondent's learned counsel has urged that the application dated 10-8-1945, was an application for execution of the decree and by the application dated 30-8-1947, merely a list of the properties to be sold was given and it was not a fresh application for execution.

4. Section 39, C. P. C. provides for an application to be made to the Court for transfer of that execution to another Court within the jurisdiction of which the judgment-debtor has property. The entire property in the possession of the judgment-debtors was outside the jurisdiction of the Lucknow Court and was within the jurisdiction of the Bahraich Court. The judgment-debtors were also residing outside the jurisdiction of the Lucknow Court. No list of properties were given in the application filed on 10-8-1945, nor could the decree be executed against the person of the judgment-debtor's representatives as the decretal amount had to be realized from the property left by the judgment-debtor who was dead.

5. Learned counsel for the appellant has drawn our attention to Order 21, Rule 10, Civil P. C. and has urged that an application under Section 39 can in no circumstances be an application for execution and after the decree is transmitted to another Court an application for execution has to be made to that Court. He has also drawn our attention to Rule 181 of the Oudh Civil Rules, which is as follows:

"A decree received for execution from another Court shall be entered in the Register of Non-Judicial Miscellaneous Cases- As soon as an application for execution of the same is made, along with such application, the documents mentioned in Order 21, Rule 6, shall be laid before the Court."

This rule makes it clear that a fresh application for execution has to be made to the Court to which the decree is transmitted and that Court would take no steps to execute the decree so long as it is not moved in that behalf by the decree-holder. Order 21, Rule 10 lays down to which Court an application for execution can be made and so far as we can see, *prima facie*, without finally committing ourselves to that view, it does not say that if the property, against which the decree-holder wants to proceed, is situate within the jurisdiction of another Court, a fresh application has to be made to that Court even if an application for execution has been made to the Court which passed the decree in which the properties against which the decree-holder wants to proceed have been included. In case, however, a proper application for execution had been made to

the Court which passed the decree along with a prayer for transmission of the decree to another Court or along with a separate application under Section 39, and that Court had sent the application for execution to the Bahraich Court, it might have been necessary for us to consider whether an application for execution made to the Court to which the decree had been transferred in accordance with the provisions of K. 181 of the Oudh Civil Rules was a fresh application or was a mere continuance of the previous application. It is not necessary to express any opinion on this point as in our view the application filed on 30-8-1947, must be in the circumstances of this case deemed to be a fresh application.

6. We have already said that the manner in which the decree was to be executed was not given in the application of 10-8-1945, nor did that application furnish any list of properties which were to be sold in execution of the decree. Order 21, Rule 11 (2) sets out what an application for execution should contain and it provides that the application should mention the mode in which the assistance of the Court is required. It requires inter alia that the decree holder should mention what properties are to be attached and sold or sold without attachment for the realisation of the decretal amount. No such details, as we have already said, were furnished in the application. It cannot be said, therefore, that the application of 30-8-1947, was unnecessary and it was merely to revive or to continue the previous application of 10-8-1945. In the application of 30-8-1947, a long list of properties was mentioned by the sale of which the decretal amount was to be realized.

7. There are a number of decisions on the point and the view appears to be almost unanimous that the decree-holder cannot after the expiry of 12 years add fresh items of property to the list of properties already given by him in his previous execution application filed within 12 years and proceed against items of property which had not been included in it. If the decree-holder had no right to add new items of property after the expiry of 12 years, it follows that he cannot give a fresh list, not having given any such list within time. The case in point is *B. Bandhu Singh v. K. T. Bank, Lt., Gorakhpur*, A. I. R. 1931 ALL. 134, where a Bench of the Allahabad High Court held that:

"It seems to us that the decree-holder is now seeking to attach fresh property and his application for the attachment of this new property is a fresh application within the meaning of Section 48, Civil P. C., and having been made more than 12 years after the date of the decree, cannot be entertained."

The same view was taken in a number of decisions of this Court, but it is not necessary for us to give a reference to them.

8. In *Hayatunnessa v. Achia Khatun*, 50 Cal. 743, a Bench of the Calcutta High Court took the same view. It was held that:

"A decree-holder should not be allowed, by subsequent application made after the expiry of the period of limitation for execution of the decree, to add other properties to the list given in his original application, presented within the period of limitation."

This view was followed and the reason for it was given by a Bench of the Patna High Court in *Jagannath Das v. Chamu Raghunath*, 8 pat. 462. At p. 467 the learned Judge said:

"It is contended that the fact that a previous application for execution was pending in which an amendment was sought to be made showed that the decree was still subsisting and had not been barred; but this in my opinion does not entitle the decree-holder to apply to the Court to proceed against the other properties, and the principle upon which amendments of pending execution petitions are allowed is, in my opinion, based upon the fact that a substantive application for execution could have been entertained on the date the application for amendment was filed."

With this view the other learned Judge Macpherson agreed. A learned single Judge of the Nagpur High Court considered all these cases and took the same view in *Prayagdas Shankerlal v. Mt. Indirabai*, A. I. R. 1948 Nag. 189. The view of the Bombay High Court to the same effect is in *Jeewandas v. Rachaoddas*, 35 Bom. 103. Lastly, the Privy Council seems to have affirmed that view in a case that went from Patna:--*Maharaj Bahadur Singh v. A. H. Forbes*, A. i. R. 1929 P. C. 209. A money decree was passed on 10-7-1896. The last application filed within 12 years was dated 9-5-1908. The prayer in the application was that certain items of property mentioned therein which were Patni rights were to be sold in execution of the decree. To the sale of these properties, however, various objections were taken and the litigation remained pending for a long time with the result that the decree holder in 1915, 1917 and 1918 made fresh applications for sale of other properties belonging to the judgment-debtors. Their Lordships held that the applications filed in 1915, 1917 and 1918 must be held to be essentially different in character from the application filed on 9-5-1908, and these applications must be deemed to be barred by limitation under Section 48, Civil P. C.

9. The result, therefore, is that this appeal must be allowed and the order of the lower Court set aside. The application for execution filed on 30-8-1947, must be deemed to be barred by limitation under Section 48, Civil P. C., and it is dismissed. In view of the facts of the case we do not feel disposed to grant any costs to the judgment debtors. The parties will bear their own costs in both the Courts.