

Maiku Lal And Ors. vs Munni Lal on 30 July, 1953

Equivalent citations: AIR1954ALL43, AIR 1954 ALLAHABAD 43

JUDGMENT

Malik, C.J.

1. This is an application under Section 115 of the Code. A decree was passed on 5-11-1941 in favour of Lalta Prasad and Manni Lal for Rs. 36,545/5/- with costs and interest. The judgment debtor deposited the whole of the decretal amount on 13-1-1942. After the deposit Manni Lal made an application that half of the decretal amount may be paid over to him. The other decree-holder Lalta Prasad, however, made attempts to get the entire decretal amount attached to the Income Tax authorities in lieu of the Income tax payable by the firm Messrs. Bhagwandas Manni Lal. After some delay in the enquiry whether income-tax was really due and whether the income was payable by the decree-holders the application for refund of half of the decretal amount came up for hearing. Lalta Prasad then raised no objection that the money did not belong to either Manni Lal or himself but that the whole of the decretal amount belonged to Bhagwan Das who had advanced the money to the judgment-debtor, Ram Janki and the names of Lalta Prasad and Manni Lal in the mortgage deed were merely as 'benamidars'.

It was further pleaded that Manni Lal was a member of a Joint Hindu family with Lalta Prasad and others and a half share in the decretal amount could not be handed over to Manni Lal without disruption in the family and adjudication as to the share of Manni Lal in joint family assets. The learned Judge rightly held that he could not go into the question at that stage whether Bhagwan Das was the beneficial owner of the decree or the decretal amount belonged to Lalta Prasad and Manni Lal nor could he go into the question whether there was a joint Hindu family and the money belonged to that family and adjudicate on the share in that case payable to Manni Lal. All these matters, the learned Judge thought could well be left to further litigation if any of the parties so desired. The learned Judge, therefore, thought it just and proper that Manni Lal should be allowed to withdraw a half share in the decretal amount on furnishing security in the sum of Rs. 20,000/- to safeguard the interest of the other party who might be entitled to claim the amount. It is urged by the learned counsel that this order was not in accordance with any provisions of the Code and was without jurisdiction.

The money was in deposit in Court and was payable to the decree-holders and it cannot be said that by allowing half of the amount to be paid to one of the two decree-holders the learned Judge did something which he was not authorised to do under the law. We think that the order could be passed by him certainly under Section 151 of the Code if under no other sections. In any case it is a just and proper order and there is no reason why we should interfere under Section 115, Civil P. C.

2. The application is, therefore dismissed with costs.