# Janki Sahu Trust vs Ram Palat on 9 March, 1950

## Equivalent citations: AIR1950ALL580, AIR 1950 ALLAHABAD 580

## Author: Ghulam Hasan

## Bench: Ghulam Hasan

JUDGMENT

Ghulam Hasan, J.

1. This execution of decree appeal has been referred to the Full Bench by Hon. M.H. Kidwai J., on the ground that there was a conflict of authority in the various High Courts in India upon the question of law arising in the case.

2. The facts are few and simple. Janki Sahu Trust obtained a simple money decree from the Civil Judge of Sultanpur exercising jurisdiction as a Small Cause Court against Sheo Ghulam deceased for Rs. 300 on 31st May 1930. The decree was transferred to the Munsif not vested with Small Cause Court powers for execution. Three unsuccessful applications for execution were made and we are concerned with the fourth application, which was the last, made on 5th March 1942. It is not denied that the limitation for execution of the decree expired on 31st May 1942. In the application above referred to four plots Nos. 248, 913, 919 and 964 described as groves were sought to be attached and sold in addition to certain houses belonging to the judgment-debtor, Sheo Ghulam died and is represented by his heir and legal representative, Ram Palat. It appears from the record that objections were filed by several persons to execution on the ground that the groves sought to be sold did not belong to the judgment-debtor but to the objectors. It would be unnecessary to refer to the matter in detail beyond saying that grove No. 919 was released from attachment, 3/4th share in groves Nos. 248 and 913 and half share in grove No 964 were also released in addition to some houses and the rest of the property was ordered to be sold. The decree was transferred to the Collector for sale of the property. Before the Collector certain defects in the application were pointed out to the decree-holder and he was given an opportunity to remove them. The proceedings before the Collector went on for some time without leading to any fruitful result. Ultimately the decree-holder on 14th March 1944, nearly two years after limitation had expired, filed an application purporting to be under Sections 151 and 153, Civil P. C., stating that he had put the groves to sale in execution of his decree but it transpired from the statement of the patwari that the grove numbers against which execution was taken out did not contain any trees and the entries in the papers were wrong. He accordingly prayed that his application for execution be amended and gave the following grove numbers in place of the old. These are :

| | | |
|---|---|---|
| No. | 918 | 5 mango trees |
| ,, | 920 | 7 mango trees |

| | | |
|---|---|---|
| ,, | 929 | 6 mango trees |
| ,, | 983 | 18 mango trees |
| ,, | 1185 | judgment-debtor's grove |
| ,, | 248 | judgment-debtor's grove |

It appears from this that Nos 913 and 964 were excluded but old No. 248 was retained and fresh numbers were added. The sale officer re turned this application to the Munsif on the same day. A notice was ordered to issue on 18th March to the judgment-debtor and the case was fixed for 14th April. The decree-holder gave the duplicate of the application to the judgment-debtor under the orders of the Court and the case was ordered to come up for disposal on 6th May. The order-sheet does not show that any proceedings took place on this date, but on 10th May the Court allowed the amendment in the absence of both the parties. Against this order the judgment-debtor filed an appeal on 5th July. He also filed an objection on 6th July before the Munsif, which was fixed for 26th August Nothing further was done in the Court of the Munsif as the matter was pending in appeal. The Munsif observed in his order allowing amendment as follows:

> "The parties were labouring under a common mistake as to the property in dispute. The mistake was discovered for the first time in the execution Court and hence this application for amendment of the property in dispute by substitution of other plots. I think that the amendment can be allowed under Section 153, Civil P. C."

It is agreed that Section 153 is a mistake for Section 151.

3. The lower appellate Court in appeal held that the application for amendment of the execution application was a fresh application seeking to proceed against properties of the judgment-debtor other than those mentioned in the original application and could not be treated as one to remedy any defect under Order 21, Rule 17 nor did the decree-holder invoke the aid of those provisions. In the opinion of the lower appellate Court as the application had been after the expiry of 12 years, the inherent powers of the Court could not be exercised in violation of the statutory provisions and the application for amendment was wrongly allowed. The lower appellate Court relied. on certain decisions in support of its conclusion.

4. When the matter came up before our learned brother, judicial decisions for and against the view taken by the lower appellate Court were cited, whereupon the whole appeal was referred to the Full Bench.

5. At the outset it appeared to us that as the suit was of the nature of small causes and was below Rs. 500 in value, no second appeal lay under Section 102, Civil P. C. This question was not argued before our learned brother and if it had been, perhaps the necessity for the reference to the Full Bench would not have arisen. There can be no doubt that a second appeal against an order passed in execution proceedings arising out of a suit of the nature of small causes is not entertainable, though one appeal against such an order is permissible. It would be sufficient to refer to Atwari v. Maiku Lal, 31 ALL. 1: (1 I. C. 553) and Maria Ursula v. Pana Navalaji & Co., A.I.R. (15) 1928 Bom. 534: (53

Bom. 46). On behalf of the decree-holder it was contended that no appeal lay to the lower appellate Court against the order of the Munsif on the ground that the order was passed under Section 151, Civil P. C., and was not as such appealable. It is admitted that this point was not argued before the learned single Judge, but we have no doubt whatever that the order having been passed in execution proceedings was an order relating to the execution, discharge or satisfaction of the decree and was a decree within the meaning of that word under Section 2(2) of the Code. That definition itself includes "the determination of any question within Section 47." Reference was made in notes 9 and 10 of Section 151 of Chitaley's Commentary on the Code of Civil Procedure. Note 9 itself says that "if an order amounts to a decree within the definition of Section 2(2) an appeal will lie under Section 96." Note 10 merely says that "a revision lies from an order under the inherent jurisdiction of the Court and where such a jurisdiction has been exercised, it will not be ordinarily interfered with in revision '' Counsel for the decree-holder was unable to cite any authority in support of the contention that the order passed in execution proceedings was not open to even one appeal because it had been passed under the inherent powers of the Court under Section 151 and contended that because a revision lies against such an order, an appeal is thereby impliedly excluded. This contention has no substance for the order being passed in the execution proceeding amounted to a decree and was appealable. A second appeal is, however, barred under the provisions of Section 102, Civil P. C.

6. No second appeal being permissible we have allowed the matter to be treated as a revision under Section 115, Civil P. C., particularly because the lower appellate Court proceeded on the ground that the Court had no jurisdiction to allow amendment after the expiry of the period of limitation. Had the lower appellate Court exercised its discretion on the merits of the case against the decree-holder, it is obvious that interference by the High Court with the exercise of discretion under Section 151, Civil P. C., would not have been either possible or justified. This leads us to the question whether this is a fit and proper case in which this Court should exercise its inherent powers under Section 151 in favour of the decree-holder. After having heard counsel on the merits of the matter we are satisfied that no case has been made out for disturbing the order of the lower appellate Court.

7. It appears that in the application for execution the decree-holder stated property, most of which belonged to third persons, and it had therefore to be released in their favour on objections being filed by them. It is true that the decree-holder relied upon the revenue papers in specifying the property to be attached but when the Court official went to the spot to attach the said property, Debi Prasad, the mukhtar and pairokar of the decree-holder, identified it out and the attachment was made on 28th March 1942, under the express directions of the mukhtar. This is borne out by the endorsement of the mukhtar on the fard taliqa, the accuracy of which he verified on the express ground that he had pointed out the attached property on the spot. In the application for execution the decree-holder had mentioned 90 mango trees existing on grove No. 913 and 58 mango trees on grove No. 964 in addition to other trees. In the application for amendment he showed only 36 trees on four plots Nos. 918, 920, 929 and 983. Assuming that the decree-holder had been misled by the entries in the revenue papers, the error should have been apparent to him when the mukhtar went to the spot to identify the property to be attached. He could easily have seen that groves NOS. 913 and 964 did not contain 148 mango trees besides others and he should have taken the earliest step to have the application for execution amended, but he did nothing of the kind. On the other hand, he

identified on the spot the existence of these trees upon the two grove plots. This action of the decree-holder's mukhtar, for which the decree-holder must bear the consequence was either due to gross negligence or was deliberate. In either case this action of the decree-holder does not entitle him to any indulgence at the hands of the Court. It is a matter of record that after the attachment was made objections were filed by several persons and a considerable portion of the property attached had to be released. The decree-holder took no steps to correct his application until nearly two years when the period had run out. In exercising jurisdiction under its inherent powers the Court is influenced by the justice of the case in favour of the party who invokes its assistance. Where the party has been guilty of laches or has been negligent in prosecuting his remedy, a Court of law would be most reluctant to exercise its inherent powers in his favour. Such power under Section 151 has to be exercised to prevent the abuse of the process of Court. Equity aids the vigilent and not the indolent. To allow the decree-holder to amend the application by adding fresh property in the circumstances of the present case would be to countenance abuse of the process of Court and to hamper rather than promote justice. A valuable right has accrued in favour of the judgment-debtor by the lapse of limitation and the Court should require reasonable promptitude on the part of the decree-holder to pursue his remedy before inherent powers can be exercised in his favour after the expiry of the period of limitation. The circumstances disclosed in the present case are far from showing that the ends of justice demand any consideration being shown to the decree-holder.

8. It was contended before the lower appellate Court, and the contention was repeated before us, that the application for amendment was one under Order 21, Rule 17, Civil P. C. The application did not purport to be filed under the provisions of Order 21, Rule 17 but only under the inherent powers of the Court. Apart from this those provisions have no application whatsoever, to the present case. That rule merely lays down that after an application for the execution of the decree as required by Rule 11 (2) of Order 21 has been made, the Court is to ascertain whether the requirements of Rules 11 to 14 have been complied with. If those requirements have not been complied with, the Court may either reject the application or may allow the defect to be remedied then and there or within a time to be fixed by it. It is only under Sub-rule (2) of Rule 17 where an application is amended under the provisions of Sub-rule (1), that it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented. The present is, however, not a case of that character. All the requirements of Rules 11 to 14 had been complied with and nothing was left undone. The Court, therefore, admitted the application under Sub-rule (4) of Rules 17 and ordered execution of the decree. The application for execution was not wanting in any particulars and the fact that the decree-holder chose to include property in the execution application which was not transferable has no bearing whatever on the question whether requirements of Rules 11 to 14 had been complied with. The plots did exist [in?] fact but they had ceased to be groves as they were denuded of trees and had, therefore, become non-transferable. Sub-rule (2) of Rule 17 applied only when any defects as contemplated under Sub-rule (1) exist or are brought to light. Where no defects exist, as in 'the present case, no question of amendment arises and the provisions of Sub-rules (1) and (2) do not come into operation. In such a case the 'application is admitted and action for execution 'taken under Sub-rule (4).

9. The case of Mathukrishna Raja v. Viswalinga, A. I. R. (27) 1940 Mad. 893 : (1940 M. W. N. 547) merely says that where a list of the properties is not given in the original application, it does not

deprive the decree-holder of the benefit of Order 21, Rule 17 (2). The case of Pratap Udai Nath v. Baraik Lal, A. I. R. (34) 1947 Pat. 129 : (225 I. C. 162) is entirely irrelevant. There the decree-holder had, through ignorance of the death of one of several judgment-debtors, applied for execution against all. When he came to know of the death of one of the judgment, debtors, he promptly put in an application for substitution of the heirs of the deceased judgment-debtor in his place. The executing Court found as a fact that the judgment-debtor had died after the passing of the decree but before the execution application was Bled. The amendment, though refused by the executing Court on the ground that it was filed beyond three years of the date of the decree, was allowed in appeal and was held to relate back to the date of the presentation of the application for execution. It was held that the judgment-debtor having died before the application for execution was filed, it could not be said that the execution proceedings had abated against him.

10. As a result of the foregoing discussion, it is apparent that this appeal has no force. The appeal is accordingly dismissed with costs.

Kidwai, J.

11. I concur.

Chandiramani, J.

12. I concur.