

Lala Jamuna Prasad And Ors. vs Sarda Prasad And Ors. on 15 October, 1954

Equivalent citations: AIR1955ALL186, AIR 1955 ALLAHABAD 186

JUDGMENT

Agarwala, J.

1. This is an appeal by the judgment-debtors arising out of execution proceedings. The only point for consideration is whether the application for execution made by the respondents decree-holders in the Court below was barred by limitation.

2. The facts are simple. In 1937 a suit for partition of the family properties was filed. The suit was decreed on the basis of an award on 2-9-1938. An appeal against it was dismissed on 22-11-1938. By the award the house in dispute was allotted to the respondents decree-holders. A part of it was in possession of the judgment-debtors appellants. The decree-holders-respondents did not make any application for getting possession over the portion of the house which was in the occupation of the judgment-debtors within three years of the decree. They made the application after eleven years on 28-11-1949.

The decree-holders were Gajju Lal, his son Jwala Prasad, and four sons of Jwala Prasad, namely, Sharda Prasad, Dharam Pal, Ram Pal and Krishna Pal. Of these decree-holders all the sons of Jwala Prasad were minors on the date of the decree. They were defendants to the suit in which the decree was passed and Jwala Prasad was shown as their guardian in the decree. The execution application was made by Sharda Prasad, Dharam Pal and Ram Pal majors and by Krishna Pal minor through Sharda Prasad as his guardian.

The decree-holders alleged that Sharda Prasad had attained majority within three years of the application for execution and that, therefore, the execution application was within time. The objection of the judgment-debtors was that the application was barred by time because Jwala Prasad, if not Gajju Lal, was a major when the decree was passed and being the Manager of the joint Hindu family to which all the decree-holders belonged was able to give a discharge within the meaning of Section 7, Limitation Act.

Now Section 7 of the Limitation Act, on which reliance has been placed by both the parties, provides:

"Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such person, time will run against them all;

but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased."

2. According to the decree-holders, Jwala Prasad could not, though a Manager of the joint Hindu family, have given a discharge in connection with the decree for possession without the concurrence of the guardian of the minors, and the mere fact that he himself was the guardian of the minors could not have vested him with the right of giving such concurrence. The judgment-debtors' case, on the other hand, is that Jwala Prasad being the manager of the joint Hindu family could have given a discharge without the concurrence of the guardian of the minors, even if such a guardian were a different person.

3. We think that the contention of the judgment-debtors is right. The manager of a joint Hindu family can recover possession of joint family properties from a trespasser, or some other person who is not entitled to remain in possession thereof, and time begins to run against the entire joint family when the manager is a major at the time of the commencement of the trespass vide --'Narsimha Deo Guru v. Krishna Chandra Dev Garu', AIR 1920 Mad 793 at p. 798 (A). The word "discharge" in Section 7 is not confined to discharge of a pecuniary liability. It refers to discharge of any liability, pecuniary or otherwise. Where a person is wrongfully in possession of property, he is liable to vacate possession in favour of the true owner. The liability, such as this is also covered by Section 7, and if possession is delivered by such person to the Manager of a joint Hindu family, it is a discharge of that liability qua the entire joint family, because the manager can act for the entire joint family for the purpose of receiving delivery of possession. There is no reason why the same principle should not apply in the case of a decree for execution by delivery of possession over immovable property.

The only exception to the power of the manager of a Joint Hindu family to give a discharge on behalf of the members of the family is contained in Order 32, Rule 6, Civil P. C., which provides that no next friend or guardian for the suit shall, without the leave of the Court, receive any money or other movable property on behalf of a minor either by way of compromise before decree or order, or under a decree or order in favour of the minor. If the guardian happens to be the manager of the Joint Hindu family, even then he cannot act contrary to the mandatory provisions of Order 32, Rule 6. This was laid down by the Privy Council in -- 'Ganesha Row v. Tuljaram Row', 36 Mad 295 (B).

4. In the present case, however, there is no question of the receipt of money or other movable property. It is a case of taking possession over immovable property, and is, therefore, not governed by the provisions of Order 32 Rule 6. As such, the Original power of the Manager to act on behalf of the entire joint family remained intact so far as taking possession over immovable property in execution of the decree was concerned. In our opinion, therefore, this application for execution was barred by time.

5. We, therefore, allow this appeal, set aside the decree of the court below and dismiss the application for execution. In the circumstances of the case, however, we make no order as to costs either of this Court or of the court below.