

Ramji Das And Ors. vs S. Mohammad Laiq And Ors. on 19 January, 1953

Equivalent citations: AIR1953ALL461, AIR 1953 ALLAHABAD 461

JUDGMENT

Malik, C.J.

1. These two appeals have been filed on behalf of the decree-holders against the order of the learned Single Judge by which he allowed two execution appsals pending in this Court.

2. In the year 1929, one Mir Muzaffar Husain had borrowed some money on the basis of a promissory note. A suit for the recovery of the money was filed and a decree obtained on 17-11-1931 for a sum of Rs. 765/4/- plus costs and interest. On 21-1-1932 Mir Muzaffar Husain died leaving 12 persens as heirs and legal representatives. In August 1932, the decree-holders filed an application for execution and for bringing the names of the legal representatives of the deceased judgment-debtor on the record. This application was granted but ultimately the execution application was not proceeded with and it was consigned to the record room. This order is dated 22-12-1932. On 13-7-1935 a second application for execution was filed but as the judgment-debtors were agriculturists, this application also could not be proceesded with and was consigned to the record room. A third application filed on 13-7-1938 met with the same fate on the same ground and the papers were consigned to the record room on 11-2-1939. On 8-5-1941 a fourth application for execution was filed and this time a prayer was made for the attachment and sale of a house No. 86. There was, however, a litigation pending in respect of this house and the execution proceedings remained stayed till the decision of that suit. The suit was decided in 1943, and on 12-7-1943 the decree-holders filed an application for amendment of the execution application by excluding a portion of the property.

3. Objections were filed on behalf of the legal representatives to the application for execution dated 8-5-1941, and the application for amendment dated 12-7-1943, and the two objections were disposed of by separate orders of the trial Court and by the lower appellate Court. It is against those orders that execution of decree appeals were filed in this Court which were allowed by the learned single Judge.

4. In the objections taken on behalf of the legal representatives of the judgment-debtors various pleas were raised, but it is not necessary for us to go into them as only one plea teas survived and remains to be decided and that is whether the second application for execution was defective inasmuch as the inventory of the property sought to be attached was not furnished under Order 21, Rule 12, Civil P. C. It is admitted that if that application was defective, then the third application and the fourth application would be barred by time.

5. Order 21, Rule 11, Civil P. C. sets out what an application for execution should contain. It is not contended that any provision of Order 21, Rule 11 was not complied with. The arguments in the lower Courts and in this Court were confined to the provisions of Order 21, Rule 12, Civil P. C. Those provisions are as follows: "Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same." The objections were decided by the trial Court and by the lower appellate Court in favour of the decree-holders. It is not necessary for us to set out the grounds on which the two Courts decided that matter. On appeal the learned single Judge of this Court took the view in deciding this objection in favour of the legal representatives that the word "judgment-debtor" in Order 21, Rule 12 means the original judgment-debtor and not his legal representatives. So that if the judgment-debtor is dead and the property is in the possession of his legal representatives, the decree-holder must furnish an inventory of the property to be attached as required by the above rule and if he has not done so, then the application for execution is defective and not in accordance with law. It is not necessary for us to consider the larger question whether the execution application was in accordance with the provisions of Order 21, Rule 11 and whether it was capable of execution.

6. The learned single Judge has given reference to one or two cases which really are not in point as they deal with the larger question whether, when an application is so-framed that it gives no details of the property against which execution can be sought, then such an* application can be deemed to be an application in accordance with law. The first case mentioned by the learned single Judge,

-- 'Mangal Sen v. Baldeo Prasad', 1892 All WN 70 (A), decided by Mahmood J., did not relate to the provision equivalent to Order 21, Rule 12 of the Code of 1908. In that case no list of property had been given and the learned Judge came to the conclusion that it was not a bona fide application by which execution was sought but was an application put in merely for the purpose of saving limitation. The other case mentioned by the learned Judge

-- 'Abdul Rafi Khan v. Maula Bakhsh', AIR 1915 All 320 (B), is also not really relevant to the point for decision. In that case the application contained a prayer that by means of attachment and sale of the property of the judgment-debtor the balance of the decree might be recovered and it was mentioned that, the list would be filed afterwards; but no list was ever furnished and the learned Judges relying on the decision of Mahmood J. quoted above, held that the application was not an application in accordance with law as no relief could be granted to the decree-holder on the basis of such an application.

7. We had the application read out to us and we find that it was mentioned in the application that the decree money might be realised by sale of the property left by Mir Muzaffar Husain situated in Qaziara Sitapur except the cattle which it was said was exempt as the deceased was an agriculturist. In any case the larger question not having been raised it was not necessary as we have already said, to go into it, whether the application was so defective that it could not be proceeded with.

8. Coming back to Order 21, Rule 12, Civil P. C., in our view the scope of that rule is a very narrow one and it is not necessary in this case to go into the more important question whether the word

"judgment-debtor" in the Code means the person against whom the decree was originally passed or it is wide enough to include his legal representatives also. The learned single Judge has held that in the rules mentioned by him the word "judgment-debtor" must mean the original judgment-debtor while in certain other rules the word "judgment-debtor" includes legal representatives also. If the various provisions of Order 21 are carefully considered, probably it would not be necessary to draw that distinction. The provisions of Order 21 must be read subject to the rights conferred on the decree-holder by the decree and the extent of the liability of the judgment-debtor or his legal representatives is also determined by the terms of the decree and the various provisions of the Code. If it is kept in mind that the decree-holder cannot get anything more than what the decree gives him and the judgment-debtor or his legal representatives cannot be liable for anything more than what the decree has made them liable for and the extent of the rights of the decree-holder and the liability of the judgment-debtor or his legal representatives are determined by law and the various provisions of the Code then it becomes unnecessary to draw the distinction between a judgment-debtor and his legal representatives and the word "judgment-debtor" in Order 21, Civil P. C. can be interpreted to include not only a person against whom the decree was originally passed but also the legal representatives.

But as we have already said, it does not appear necessary to discuss this matter further as the provisions of Order 21, Rule 12 clearly indicate that they apply only to cases where the application is made for the attachment of any moveable property "belonging to the judgment-debtor, but not in his possession". If the word "judgment-debtor" means the original judgment-debtor only, then after his death this rule will not apply as the property can no longer be said to belong to Mm. In interpreting this rule it will not be right to omit to take into consideration the words "belonging to a judgment-debtor". The point of time indicated is the time of the application when the property which belongs to a judgment-debtor is not in his possession. If the judgment-debtor by reason of his death has ceased to be in possession of the property he has also ceased to be its owner. If the word "judgment-debtor" is interpreted to mean the person against whom the decree was passed and also his legal representatives after his death, this rule would apply only to a case where the decree-holder alleges that a part of the property belonging to his judgment-debtor (including his legal representatives if he is dead) is in the possession of a third party and wants to proceed against that property. In such a case he has to specify what is that property which he says is in the possession of a third party.

This obviously is for the protection of the third party and is not for the protection of the judgment-debtor or his legal representatives. It is true that a legal representative is liable only for the property that has come into his possession from the original judgment-debtor, but that does not mean that he can for the purposes of Order 21, Rule 12 be treated as a third party in possession of the judgment-debtor's property. The following illustration will show that there is no real reason why such a narrow interpretation should be placed on the word "judgment-debtor" in Order 21, Rule 12, Civil P. C. If the decree had been passed against Mir Musaffar Husain's legal representatives and he had died before 17-11-1931, the decree having been passed against the legal representatives of Mir Muzaffar Husain, they would be the judgment-debtors even if a judgment-debtor meant a person against whom a decree was passed and as they were in possession of the property of the deceased no list of properties would be necessary under Order 21, Rule 12, Civil P. C. There seems to be no good

reason why a difference should be made between a case where the debtor has died before the decree and a case where he has died after the decree.

9. We are therefore not satisfied that the view taken by the learned single Judge that the second application for execution dated 13-7-1935, was not in accordance with law is correct. We set aside his order and restore the order of the lower Courts with costs in all the Courts.