

PRIVY COUNCIL

Kirtyanand Singh

Vs.

Prithi Chand Lal Chaudhury

P.C.A.No.126of 1930

(Lords Tomlin, CJ.Thankerton and Sir Lancelot Sanderson. JJ.)

22.11.1932

JUDGMENT

LORD TOMLIN J.

1. This is an appeal from a decree of the High Court at Patna, which affirmed an order dated 19th September 1927, of the Court of the Subordinate Judge of Monghyr. The question arises in this way. On 1st April 1914 a decree was made in certain rent suits by which by consent the present appellants, or their predecessors, obtained a decree for Rs. 1,84,521, besides further interest thereon at 8 annas per cent per month. It was provided by the decree that the plaintiff should not take out execution of the decree until March 1915, so that there was a year's suspension. The present respondent was a consenting party to the decree in his capacity as surety. The result of that apparently is that the decree can under section 145, Civil Procedure Code be executed against him as though he were a party to the suit and the principal debtor.

2. Having obtained that decree, the plaintiffs made a number of applications for execution. The first was made on 23rd June 1915, and apparently was struck off on 24th June 1916, without there being any satisfaction of the decree. A second application was made on 10th September 1918, and that again was struck off on 25th March 1919 without any satisfaction of the decree. A third application was made on 10th April 1919; but in the meantime the defendants in the rent suits who apparently were, or claimed to be, interested in the Srinagar Raj, as one of their principal assets, had a suit commenced against them by a lady of the family, the nature of Which does not very clearly appear but which was evidently a suit for the protection of the property in the interests of the family.

3. In the course of that suit, apparently in January 1920, a receiver was appointed, and

on 31st January an application was made in that suit by the appellants in the absence of the judgment-debtors and of the surety, which resulted in an order in that suit for payment of Rupees 9,000 half-yearly by the receiver in that suit to the appellants in respect of their judgment debt in the rent suits. In fact the receiver paid nothing. On 24th February 1920 the third application for execution in the rent suits which was up till that moment pending, was struck out. About this time it appears that at the instance of the receiver in the Raj suit the proceedings in the rent suits were transferred from Monghyr, where they had theretofore been conducted, to Bhagalpur where the Raj suit was proceeding; and presently an application was made by the appellants in the Raj suit asking in effect that either the receiver might pay their debt, or that they might levy execution on the property of the Raj in the hands of the receiver.

4. That application seems to have come before the Subordinate Judge on many occasions, and on each occasion he saw fit to postpone decision and ultimately, according to the order sheet, on 16th September 1922, he made an order that the appellants were to wait for some time for payment of the larger decree, and he directed an account of the smaller decree. That only means that the compromise decree was made up of two separate sums, a bigger sum and a smaller sum; so that the result of that was that they were left with nothing in the main to satisfy their debt. At that moment when that order was made, it is to be observed that there were in fact no, execution proceedings pending at all. The appellants appealed against the last mentioned order, and on 16th April 1923, that is seven months afterwards, the order was set aside. On 15th May 1923, that is, a month after the order was set aside, the appellants made their fourth application for execution in the rent suits. That was struck off on 8th June 1923, and there is no information as to why it was so struck on, although it appears that in the meantime some sum had been paid to the appellants by the receiver in the Raj suit.

5. On 11th June 1923, that is, three days after the fourth application was struck off, the appellants made a fifth application for execution and that was struck off on 30th March 1926. But in the meantime, in some way or another, they had succeeded in getting an order for the sale of the Raj property, presumably in the Raj suit, and the Raj property was in fact sold and something over a lakh of rupees was realized and paid to them in satisfaction pro tanto of their judgment-debt. But there remained a substantial sum still owing to them. On 10th June 1925 they made a sixth application for execution in the rent suits. Their Lordships have no particulars of that application, or what happened to it; it probably suffered the fate of its predecessors and was struck

off without any particular result. On 13th July 1927 there followed a seventh application for execution in the rent suits. It is to be observed that the six applications which have been mentioned up to this point were all applications against the judgment-debtors. The seventh application was however an application against the surety. This application founds the present appeal before their Lordships' Board, because objection was taken to it that it was taken out of time. That objection was upheld in both Courts below, and it is against that conclusion that the present appellants have appealed to His Majesty in Council.

6. Now two points are made by the appellants. The first is that though under section 48, Civil Procedure Code it is prima facie barred because a period of twelve years has run, it is saved by the order of 31st January 1920, by which the receiver was ordered to make half-yearly payments to the appellants, on the ground that order is within the meaning of Section 48(1) (b) a subsequent order directing payment of money. The section is as follows:

"Where an application to execute A decree not being a decree granting an injunction has been made no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from : (a) the date of the decree sought to be executed, or (b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree."

7. Their Lordships are of opinion that on the true construction of the section the subsequent order must be an order in the suit in which the decree is made and an order which directs payment by the debtor or the surety of money in respect of the judgment debt. The order of 31st January 1920 satisfies none of these conditions. It is an order made at a time when some of the property which was believed to be the property of the debtors was the subject of some suit in the nature of an administration suit in which a receiver had been appointed. The application for the order made in that suit was made in the absence of the judgment-debtors and in the absence of the surety, and the order for payment was an order on the receiver in that suit. That, in their Lordships' opinion, is not such an order as is contemplated by Section 48(1) (b) at all, and that point therefore fails. The second point depends upon Section 15, Lim. Act, 1908, which is in these terms:

"(1) In computing the period of limitation prescribed for any suit or application

for the execution of a decree the institution or execution of which has been stayed by injunction or order the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn shall be excluded."

8. The point made by the appellants is this. They say that on 16th September 1922 the Judge in the Raj suit ordered, according to the note in the order paper, their Lordships have not the order before them that the decree-holders were to wait for some time for payment. That order was set aside on 16th April 1923. Therefore there was an interval of seven months during which the order of 16th September 1922 was in operation. The appellants say that was a stay, and those seven months saved the situation for them because if those seven months are not counted the present application was in time. Now the first thing to be observed is that at the time when that order was made, there was in fact no application for execution pending at all. It was an order again made in the Raj suit and not in the rent suits; it was an order made on an application by the decree-holders seeking leave to proceed against property in the hands of the receiver in the Raj suit. It was an order which did not stay execution at all, but simply said that so far as that application in that suit was concerned the appellants were to wait. That seems to their Lordships not to be in any sense within the meaning of the section a stay of the execution by injunction or order. This point also fails.

9. A number of other points were discussed in the Courts below including the relation between Section 48, Civil Procedure Code, and Section 15, Lim. Act, 1908; also the relation between Section 48, Civil Procedure Code and Article 182, Lim Act. Having regard to the view which their Lordships take of the two points that have been raised those matters do not fall to be considered at all. The result must be that their Lordships will humbly advise His Majesty that this appeal should be dismissed and the appellants must pay the costs.

Appeal dismissed.