

K. L. Selected Coal Concern

Vs

S. K. Khanson and Company

Civil Appeal No. 2169 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

20.10.1970

JUDGMENT

HEGDE, J. -

1. This appeal by certificate arises from an execution proceeding. The judgment debtor is the appellant and the respondent is the decree-holder. The decree under execution is a compromise decree passed by the High Court of Calcutta on its original side in Suit No. 309 of 1960.
2. The judgment debtor had objected to the execution of the decree primarily on the ground that the decree includes properties which were not included in the suit and the decree having not been registered, it is not executable. Both the Trial Court and the High Court in appeal have rejected the contention of the appellant.
3. Now coming to the decree under execution clause (1) therein provides :

"There will be a decree in favour of the plaintiff for Rs. 2,50,000/- on account of advance and other sums including Commissioner payable up-to date in full and final satisfaction of the plaintiff's claim as aforesaid."
4. Sub-clause (a) to (g) of clause (2) of the decree create certain selling agencies with which we are not concerned in this case. Sub-Clause (k) of clause (2) of the decree is relevant for our present purpose and that sub-clause reads :

"For the payment of the aforesaid decretal amount and other sums payable to the plaintiff the defendant hypothecates as a first hypothecation the following machineries of the said Chalbalpore Colliery. Besides the above, the defendants have deposited with the plaintiff title deeds of their Khudika Property at Salanpore District Burdwan with intent to create equitable mortgage thereon for securing repayment of the amount which is now due and which might hereafter be due, the defendants having declared the said Khudika Property to be free from all encumbrances excepting the claim for royalty in the suit which is pending against the defendant in the High Court of Calcutta.

#LIST OF MACHINERIES AT CHALBALPUR COLLIERY

Item No.	Particulars
1.	5 (five) Verticle boilers Nos. 9207, 4613, 9259, 6017 and 6019.
2.	1 (one) Haulage Engine 12 x 24.
3.	1 (one) Winding Engine 12 x 24.
4.	1 (one) Endless Haulage 10 x 8.
5.	1 (one) Electric Haulage 32 H.P.
6.	1 (one) Electric Haulage 15 H.P.
7.	1 (one) Headgear complete with pully cage, cape 35 ft.
8.	1 (one) Electric Pump 62 H.P. English.
9.	1 (one) Transformer 200

K.V.A.10. 1 (one) H.J. Main Switchgear.11. 6 (six) L.J. Switchgears.12. Tramlines 50,000 ft.13. 4 Steam Pump. 6 x 12.14 Pipes of different sizes 12,500 ft.15. Coal Tubes 200 (two hundred).###

5. The judgment debtor having failed to pay the amount mentioned in the decree, the decree-holder levied execution claiming Rs. 2,50,000/- mentioned in Paragraph (1) of the decree with costs. The relief asked for in the execution petition reads :

"The judgment-debtor not having acted in terms of the decree and not having allowed the decree-holder to sell any coal of Colliery nor having paid any sum, the decree-holder prays for realisation of the decretal amount and costs of this execution case by sale of the charged properties mentioned in the schedule below. The decree-holder reserves the right to proceed on the equitable mortgage upon Khudika Colliery."

6. As mentioned earlier the objection is as to the validity of the decree on the ground that as it includes immovable properties which were not the subject-matter of the suit and as such the decree-holder was required to register the decree; the same having not been registered it is not executable.

7. The Trial Court did not decide the question whether the properties charged under the decree are immovable properties or not. It opined that that question has to be decided at the time the properties are brought to sale. But in appeal the High Court came to the conclusion that from the tenor of the compromise decree, it is clear that those properties are movable properties and therefore there was no need to register the decree. This is essentially a finding of fact. Unless it is shown that the items of machinery mentioned in the decree over which a charge had been created had been permanently embedded to earth, it is not possible to come to the conclusion that those items of machinery are immovable properties. If they are not immovable properties as held by the High Court, then there was no need to register the decree. It was for the judgment-debtor to show that the decree was invalid for the reasons mentioned by him. He has failed to establish that fact.

8. The appellant tried to assail the validity of the decree by taking up certain new plea in this Court, but those pleas do not raise pure questions of law. Those pleas had not been taken either before the executing court or before the High Court. Hence we did not allow him to advance those pleas.

9. In the result this appeal fails and the same is dismissed with costs.

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