

ALLAHABAD HIGH COURT

Shib Charan Das

Vs

Ram Chander

(Stuart. J.)

28.02.1922

JUDGMENT

Stuart, J.

1. Musammat Kirpa Devi filed three suits against Durga and others for possession of certain houses situated in Meerut city. She obtained decree for possession of the sites, the possession being conditional on her paying compensation to the judgment-debtors in respect of the materials of the houses. Appeals were Sled to the District Judge who upheld the decrees of the Trial Court, Appeals were filed to the High Court which upheld the decrees of the Courts below. Before the passing of the decrees of the High Court Kirpa Devi transferred the property in those suits to Shib Charan Das. She transferred the property by a sale-deed dated the 14th of June 1917. The High Court decrees were passed on the 18th of July 1917. It would have been open to Shib Charan Das to apply to the High Court to have his name substituted for that of the plaintiff but he did not do so and the final decrees of the 18th of July 1917 were passed in favour of Musammat, Kirpa Devi. Shib Charan Das then applied in execution for the ejectment of the judgment debtors. The Courts below have refused to grant his prayer on the ground that he is not the assignee of the decrees. Before the present Code came into force, it was decided in *Hansrai Pal v. Mukharji Kunwar*¹ that if a decree-holder holding a decree for possession of immovable property sold all the property or portions of such property, the sale does not, without express provision to that effect, give the purchaser any right to execute the decree himself. Apart from authority, Order XXL, Rule 16 would apparently make it clear that no person other, than the assignee of a decree, where the assignment has been transferred in writing or by operation of law, can execute the decree. The learned Counsel for the appellant Shib Charan Das argued that execution can now be obtained by a transferee of a property under the authority of Section 146. This section which introduced a new rule reads as follows:---"Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him."

2. It is true that Shib Charan Das is claiming under Kirpa Devi in a sense, but he is claiming as the transferee of the property, not as assignee of the decree. Apart from that, Order XXI, Rule 16 in my opinion gives the saving provision. Order XXI, Rule 16, lays down definitely that when a person other than the decree holder wishes to execute a decree, that person must prove an assignment in writing or by operation of the law, and must adopt the procedure laid down in Order XXI, Rule 16. If the argument of the learned Counsel for the appellant were accepted, it would not be necessary to invoke the provisions of Order XXI, Rule 16 in any circumstances. It has further been argued that inasmuch a transfer took place before the decree of the High Court came into existence and while the appeal was pending before the High Court, the decree could not be assigned to Shib Charan Das, because there was no decree then in existence, I cannot accept this argument but even if accepted it could not help Shib Charan Das, The fact is that no one can execute the decree except the decree holder or a person to whom the decree has been transferred by assignment in writing or by operation of the law. It was for Shib Charan Das to comply with the provisions of Order XXI, Rule 16, It is immaterial what his difficulties may have been in complying with those provisions. The view which I take appears to have been taken by Chamier, J., in *Dost Muhammad v. Allaf Husain Khan* 17 Ind. Cas. 512. If Shib Charan Das desired to execute the decrees in question it was an essential preliminary that those decrees should have been assigned to him in writing. I accordingly dismiss these appeals with costs.

Cases Referred.

130 A 28 : 4 A L. J. 759; A. W. N. (1907) 280