

PATNA HIGH COURT

Kamal Kishore Prasad Singh

Vs

Hari Har Prasad Singh

A.F.A.D. No. 19 of 1949

(B.P. Sinha and C.P. Sinha, JJ.)

19.02.1951

JUDGMENT

B.P. Sinha, J.

1. This is a judgment-debtors' appeal from the decision and order, dated 18th January 1949 based by the Subordinate Judge of Patna overruling their objections to the execution of the decree, under Section 47, Civil Procedure Code

2. It appears that the respondents' family, which, admittedly, continues to be a joint Hindu Mitakshara family, obtained a decree on the foot of a simple mortgage bond. The preliminary decree was made final on 24th August 1938. The decree had been passed in favour of five persons, namely, (1) Nem Narain Singh, the karta of the family, (2) Harihar Singh, son of Nem Narain's brother, Jangi, (3) Bang Bahadur alias Madni, (4) Rameshwar, both sons of Nem Narain Singh, and (5) Nageshwar alias Rajniti, son of Harihar aforesaid. It appears that Bang Bahadur alias Medni aforesaid died sometime in 1939, leaving him surviving a widow and the other members aforesaid. By a petition, dated 16th September 1939, the Court was apprised of the fact that Medni, one of the decree-holders, was dead. That was done on the 22nd of August, 1945. The present execution case was instituted on the 1st February 1947, by Nem Narain Singh for himself and as guardian of his grand-nephew, Nageshwar, as also by Harihar and Bameshwar. Nem Narain himself died in July 1947. Nageshwar attained majority during the pendency of the execution proceedings.

3. An objection under Section 47, Civil Procedure Code was filed by the judgment-debtors on the grounds (1) that Nem Narain Singh and Rang Bahadur alias Medni, two of the decree-holders died leaving behind them their respective widows, who became joint decree-holders along with the other members of the family, and that, in their absence, the decree could not be executed; (2) that, the preliminary decree having been amended, unless the final decree also was accordingly

amended, the execution was not maintainable; and (3) that the valuation of the properties should be revised, as the last valuation was made as long back as 1940. These objections were overruled by the Court below. Hence this appeal.

4. Before us, only one point has been pressed in support of the appeal, namely, that, the widows of Nem Narain Singh and Bang Bahadur Singh alias Medni not having been made parties to the execution proceedings, and the terms of Rule 15 of Order 21 of the Code not having been complied with, the execution was not maintainable. So far as Nem Narain is concerned, he died after the filing of the execution petition, and his widow could not have been made a party to the proceedings at the time the execution petition was filed. But the position is different so far as the widow of Rang Bahadur is concerned'. Rang Bahadur died in 1939, during the pendency of the first execution case. In the present execution case, the decree-holders filed the execution petition on behalf of the surviving co-parceners under the impression that it was not necessary to implead the widow of the deceased Medni. On behalf of the judgment-debtors, it has been contended vehemently that, under the provisions of the Hindu Women's Rights to Property Act(XVIII (18) of 1937) as amended by Act 11 of 1938, the widow of the deceased decree-holder should have been impleaded as a party to the execution proceedings. It was also contended that the application, not being in terms of Rule 15 of Order 21, was not maintainable.

5. The facts of this case are not disputed on either side. It is an admitted fact that Medni died in 1939, leaving him surviving only his widow. It is also not disputed that the family still continues to be a joint Hindu Mitakshara family. Hence, in such a family, it is always open to the leading member as the karta of the family to represent the whole family in all transactions in Court or out of Court. But it was contended on behalf of the appellants that, though it was open to the mortgagees to sue through the karta of the joint family for the enforcement of the mortgage bond, as a matter of fact, all the male members of the family, that is to say, all the coparceners, joined in bringing the suit. Hence, it was urged, the suit was not by the karta alone in his representative Capacity. Under the provisions of r. 15, any one of the several joint decree-holders may apply for the execution of the whole decree for the benefit of all the decree-holders, including the survivors and the legal representatives of a deceased decree-holder, if any. Rule 11 of Order 21 of the Code has enumerated the, details which have got to be stated in the petition for execution, and Rules 12, 13 and 14 of Order 21 have also laid down the details to be filled in as regards the description of the property to be proceeded against in execution of a decree. Rule 15 of Order 21 is an enabling one. Ordinarily, all the persons shown in the decree as decree-holders would be entitled to execute the decree. But R. 15 has made it possible for one of the decree-holders to execute the whole decree, unless the decree itself contains any provisions to the contrary. The provisions of R. 15 apply to all cases where a decree has been passed in favor of more persons than one as joint decree-holders. If the decree itself indicates that, though a number of persons figure as decree-holders, their interests are clearly defined as to shares or as to amounts out of the total amount decreed, the decree may not be executed by any one of them as regards the whole, because it may be several decrees contained in one document If there are several decree-holders,

who have obtained a joint decree, they may be members of a joint Hindu Mitakshara family or they may be complete strangers to each other. In the latter case, it will be incumbent upon any one of the decree-holders clearly to state in the execution petition that he is executing the decree in its entirety for the benefit of all the other decree-holders or for the benefit of the survivors and legal representatives of such of them as have died since after the passing of the decree. But, in the case of a joint Hindu Mitakshara family, though it may be desirable expressly to state that the decree was being executed for the benefit of all the others it is not absolutely necessary that that should be so stated in the petition itself. As I read R. 15, it does not make it obligatory upon one of the decree-holders executing the entire decree to state in so many words in the execution petition that the decree is being executed for the benefit of all of them, because, in the very nature of a joint Hindu Mitakshara family, every transaction is, prima facie, for the benefit of all the coparcenary and all the members of the joint family, and, if, since after the passing of the decree, any one of the members shown as decree-holders has died, the other members automatically step into his shoes, and the decree executed by one of the members of the family must inure to the benefit of all. Rule 17 of Order 21 insists upon the requirements of Rules 11 to 14 being complied with, and empowers the Court to reject the application for execution, if, upon opportunity being given to the applicant, the defects, if any, are not removed within the time allowed. Rule 17 does not speak of any particulars required by R. 15 to be necessarily incorporated in the application for execution. Hence, in my opinion, if the particulars required by Rules 11 to 14 of Order 21 of the Code have been incorporated in the petition, it becomes an application in accordance with law. The provisions of r. 15 are meant to safeguard the interests of the decree-holders as also to ensure that the judgment-debtor, on making payment of the decretal sum, gets a full and valid discharge. Hence it is for the Court, in each case, to satisfy itself that, where the decree has been, on the face of it, passed in favor of more than one person, it is being executed for the benefit of all of them. In order to do that, the Court has been empowered to make such order as it deems necessary for protecting the interests of the persons who have not joined in the application for execution. Hence, in my opinion, it is not absolutely incumbent on the executing decree-holder to state in so many words in the execution petition itself that the decree is being executed for the benefit of all the decree-holders. If it appears to the Court that the decree is, as a matter of fact, being executed for the benefit of all the decree-holders, it will allow the execution to proceed, even though such a statement does not find place in the application for execution. Ordinarily, of course, such a statement ought to find place in the execution petition itself, so that the matter is placed beyond all controversy. But the absence of such a statement from the execution petition does not necessarily entail the result that the application for execution becomes contrary to law. On first principles, therefore, and on an examination of the relevant provisions of the Code, it does not appear to me that the application for execution in the present case is not in accordance with law. Certainly, it is for the Court to lay down such conditions as would ensure the protection of the interests of such of the decree-holders as have not joined in the application for execution. In the present case, we have been assured by counsel for the decree-holders that they did not implead the widows of the deceased decree-holders aforesaid under the mistaken legal advice that those ladies, not being coparceners,

need not be shown as decree-holders in the application for execution. On behalf of the appellants, great reliance was placed upon the Division Bench ruling of this Court in the case of *A. J. Meik v. Midnapur Zamindari Co. Ltd¹*, which lays down that a decree in favour of two persons jointly cannot be executed by one of them in respect of what he considers to be his share of the decree; nor can the whole decree be executed by him, unless he applies for execution on behalf of all the decree-holders or for the benefit of them all. That was not a case of a joint Hindu Mitakshara family. The decree-holders in that case were the Midnapur Zamindari Company and Mr. Mathesa; but only the Midnapur Zamindari Company applied for the execution of the decree, without stating that it was for the benefit of both the decree-holders. On perusal of the execution petition in that case, their Lordships held that it was neither in substance nor in form an application within the terms of Rule 15 of Order 21 of the Code. Naturally, therefore, they held the execution to be incompetent. But, in the present case, in the very nature of things, so long as the family has not disrupted, the application for execution must be deemed to be for the benefit of all the members of the joint family. A joint Hindu Mitakshara family is in the nature of a corporation, which owns all the property of the family as one body, and, so long as there has been no partition, no individual member can say that he has a particular share in the property. Each member's proprietary interest extends over the whole property. Hence, any dealing by any member of the family, provided he is authorised to do so, is a dealing in respect of the entire property. In the present case, the application for execution is in respect of the entire decree and on the assumption that it is for the benefit of all the decree-holders. Hence, in the circumstances of the present case, where a joint Hindu Mitakshara family is concerned as decree-holders, the application for execution by the leading members of the family cannot be said to be invalid, simply because it has not been stated in so many words that it is for the benefit of all the members of the joint family. The decision of another Division Bench of this Court in the case of *Mt. Nasiban v. Surendranath²*, relied upon on behalf of the appellants is also not clear on the question whether the decree holders were members of a joint Hindu Mitakshara family. Hence, that decision is also equally distinguishable from the facts of the present case.

6. It was further argued on behalf of the appellants that, as a result of the amendment of Hindu law by the Hindu Women's Rights to Property Act, 1937, the widow of Rang Bahadur acquired an interest distinct and separate from that of the coparcenary on the death of her husband. Hence, it was argued, the widow was a necessary party to the execution proceedings and her absence from the proceedings was fatal to the execution case. According to the provisions of sub-sections (2) and (3) of section 3 of that Act, the widow of Rang Bahadur had the same interest in the decree as he himself had. But the nature of that interest is the limited interest known as a woman's estate. She has also been given the right to claim partition equally with a male member of the family. As I apprehend the effect of the Act, it amounts to interposing the interest of Hindu Women's estate in a joint Hindu coparcenary, that is to say, so far as the coparceners themselves are concerned, the coparcenary continues as before the death of one of the coparceners; there is no disruption of the joint family. Hence, those members still continue to enjoy as amongst themselves the benefits of survivorship. But., so far as the widow of deceased coparcener is

concerned, she acquires in the interest of her deceased husband in the coparcenary property a Hindu woman's estate, which she can get separated from the rest of the family by a suit for partition.

7. It was argued on behalf of the respondents decree-holders that the interest of such a Hindu widow is only an inchoate right which ripens into property only after she has chosen to get a partition effected, and that, so long as she does not choose to enforce this statutory right of partition, her rights are the same as before, namely of maintenance out of the joint family property. But it is not necessary to discuss this aspect of the question, because we are not called upon in this case to determine exactly as to what is the extent of the rights conferred by the Act upon the widow of Rang Bahadur. Whatever rights she has in the decree under execution, that right has got to be conserved for her benefit. In this view of the matter, in my opinion, it is not necessary to discuss a number of rulings which have been placed before us by Mr. Mahabir Prasad, appearing on behalf of the decree-holders.

8. In this Court, the widow of Rang Bahadur has filed an affidavit to the effect that the present execution is for her benefit also, and that her interests are safe in the hands of the applicants for execution. Whatever the interest of the widow concerned may be in the decree, that interest can be safeguarded by providing that the money realised by the sale of the mortgaged properties shall not be made over to the applicants without the consent of the widow concerned, that is to say, if the widow of Rang Bahadur alias Medni makes an application to the executing Court to the effect that the money may be made over to the karta of the family, or to any particular member of the family, only, then the decree would be deemed to be satisfied, and the judgment debtors completely discharged from their liability.

9. A further question appears to have been raised that, the final decree not having been amended in accordance with the preliminary decree, which was amended at the instance of the judgment-debtors by an order of this Court, the final decree was not capable of execution. But the judgment debtors themselves should have got the final decree amended, if they were so interested. At any rate, the preliminary decree, having been amended, the final decree also must be deemed to have been amended accordingly, and the present execution shall not proceed in respect of any amount in excess of the correct amount determined in accordance with the amended preliminary decree. That will, in my opinion, protect the interest of the judgment-debtors.

10. For the reasons aforesaid, and subject to the directions given above, the appeal is dismissed but, in the circumstances, without costs.

C. P. Sinha, J.

11. I agree.

Appeal dismissed.

Cases Referred.

¹⁴ Pat. 1. Jour. 575

²⁴ Pat. 485