(1930) 05 AHC CK 0018

Allahabad High Court

Case No: None

Bisheshwar Nath		APPELLANT
	Vs	
Narmadeshwar Prasad Upadhia		RESPONDENT

Date of Decision: May 28, 1930

Hon'ble Judges: Boys, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Boys, J.

This is a judgment-debtor objector''s appeal. The appellant Sahu Bisheshwar Nath obtained a simple money decree for a large sum, about two lakhs, against Kunwar Suraj Singh and Dalip Singh. The defendants had a decree against Ram Phul Kunwar who deposited a sum of Rs. 50,000 in Court for payment, if the Court so ordered, to Sahu Bisheshwar Nath, the decree-holder. Sahu Bisheshwar Nath applied for attachment of this sum and was resisted by the defendants. Their objections were upheld by the High Court and they got a decree for costs for Rs. 764-15-0. The decree-holders of this decree for costs transferred their decree to Pt. Narbadeshwar Prasad the respondent in the present appeal. He applied for execution of this decree for costs and was met by objections by Bisheshwar Nath, decree-holder in the original suit, asking for a set off of this decree for costs against him against the balance of the amount due to him under his decree in the suit. The lower appellate Court has dismissed his objections and he now appeals. It is noticeable that the judgment of the lower Court deals only with Order 21, Rule 18, and manifestly as the Court held, that rule has no application. Whatever else may or may not be clear in this matter it is manifest that the decree in the suit and the decree for costs were not decrees in separate suits.

2. Before I had heard counsel for the appellant I had not unfortunately read the judgment of the lower Court, or I should have found that the rule on which counsel based his argument here was never mentioned to the lower Court. Counsel assured

me that the objection to the application for execution had been based on Rule 19, Order 21 as well as other provisions of the law; but this is not the case. I have looked at the objection and it is headed as made under Rule 18 and Rule 18 only.

3. Had that come to my knowledge before, I should have hesitated much about allowing the appellant to rely on Rule 19 now. It is not fair, and this had been constantly stated by one Judge or another of this Court, to ask that a lower Court''s decision should be upset when the provisions of law relied on in this Court were never brought to the attention of, much less pressed upon, and the lower Court has therefore been given no opportunity of acceding to such argument.

4. I had however heard counsel as to Rule 19 before I discovered that it had never been mentioned to the lower Court. It so happens that it was I before whom this appeal came for admission originally and I stated there that I was not disposed to hold Order 21, Rule 19 applicable to a case like this. But I was prepared to allow the point to be argued. Rule 19 says:

Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then....

5. It is manifest here that the two decrees bear all the literal characteristics of two different decrees. But it is urged that there can only be one decree in one suit, and that the decree for costs obtained by the judgment-debtor should be regarded as a subsidiary part of the main decree in the suit. This would manifestly be a straining of the words "a decree" in Rule 19. But I am asked to hold that the words "a decree" should be so interpreted by analogy with the decision of this Court held in Mt. Ananti Vs. Chhannu and Others that there cannot be two decrees in one suit and that two decrees in two cross-appeals arising out of one suit must be regarded as in fact one decree.

6. In the first place I am of opinion that ease is distinguishable from the present in this, that in that case it would be quite impossible to hold that the two decrees had a separate existence with such a result as was contended for in that case, that matter would be res judicata when one decree was looked at and not res judicata when another decree was looked at. Such a result would manifestly be impossible, and the treating of the two decrees as one is an inevitable consequence. This is not so in the present case. There is no question of its being absolutely necessary to regard both decrees as one, or the later decree for costs as a subsidiary part of the main decree. I am therefore of opinion that there is no sufficient analogy between the two cases to justify the application to this case of the proposition which may be literally wide enough to cover it that there cannot be two decrees in one case. Moreover the second decree in the present case is in execution proceedings.

7. But this is not all. Apart from the Straining of the language that would be necessary the actual language used, "a decree under which two parties are entitled", seems to me to more clearly suggest the simultaneous birth of two sets of rights

under one decree. It is not even contended here that Rule 18 could be applicable. For the reasons I have given I am of opinion that Rule 19 is also inapplicable, and the appeal is dismissed with costs.

8. Counsel for the appellant asks for leave to appeal. He has not been able to show to me any authority in support of his contention, and the sets of material facts which appear in this case are such as must be of frequent occurrence. He has therefore this much against him that interpretation for which he asks has never been, so far as he has been able to find authority, adopted by this Court. I have given my reasons for holding that the interpretation is not justified, and in view of the absence of any authority supporting such an interpretation I do not think this is a case in which I should give leave to appeal. Leave is refused.