
(1870) 06 CAL CK 0004

Calcutta High Court

Case No: Miscellaneous Regular Appeals Nos. 120 and 121 of 1870

Sheo Narayan Sing

APPELLANT

Vs

Harbans Lal

RESPONDENT

Date of Decision: June 20, 1870

Final Decision: Dismissed

Judgement

Markby, J.

This is a Regular Miscellaneous Appeal from the decision of the Officiating Judge of Shahabad. The appeal is by the person who describes himself as the decree-holder. It appears that, on the 14th May 1866, a decree was obtained in the Small Cause Court at Calcutta, by Bhikan Chand and Jyte Pal, against Harbans Lal and Rama Prasad. On the 13th April 1869, a certificate of non-satisfaction was asked for and obtained by the decree-holders, and the certificate with a copy of the decree was forwarded to the Judge of Shahabad for execution, u/s 285 of the Civil Procedure Code. There were various applications with reference to the execution of this decree, but the execution proceedings were ultimately struck off on the 21st August 1869. On the 31st August, the decree was sold by the decree-holders to Sheo Narayan Sing, who is the appellant before us; and then on the 11th September 1869, on his application to the Judge of Shahabad, the proceedings in execution were ordered to be revived; and on the 23rd September 1869, his name was substituted for that of the decree-holders in the execution proceedings. Now, upon this statement of the facts it was suggested that Sheo Narayan had no locus standi before us as an appellant in these proceedings; and that, in fact, he had no locus standi before the Judge of Shahabad to put the Court in motion for the execution of the decree; and after hearing the arguments of Baboo Ramesh Chandra Mitter for the appellant, we think that this objection ought to prevail.

2. Section 208 gives power, when a decree is transferred by assignment, to the assignee to apply for execution; and if the Court thinks proper to grant the application, the decree may be executed in the same manner as if application were made by the original decree-holder. The question then that we have to decide is whether the term "Court" in

that section includes the Court to which the execution of the decree may have been transferred u/s 284. Section 287 is the section which indicates the duty of the Court to which a decree may have been transferred for execution; and says: "The copy of any decree when filed in the Court to which it shall have been transmitted for the purpose of being executed, shall, for such purpose, have the same effect as a decree or order for execution made by such Court." A question has been raised somewhat similar to this in reference to the power of the Court to which a decree is transmitted for execution to enquire into the question of limitation, and it has been held that this Court has that power, the enquiry into the question of limitation being considered to be an enquiry "for the purpose of the execution" within the meaning of section 287. We in no way dissent from that decision See *Leake v. Daniel* Case No. 507 of 1867; March 19th, 1868, but it does not decide the present case, because it is clear from section 290 that, for some purposes, even as regards the execution, the Court which passed the decree is the Court which controls the proceedings. The Court to which a decree is transmitted for execution is empowered by section 290 to stay the execution pending an application to the Court which granted the decree "for an order to stay the execution or for any other order relating to the decree or the execution thereof." It is necessary therefore to determine whether this being an application connected with the execution ought to have been made to the Judge of Shahabad or to the Small Cause Court in Calcutta. It seems to us that this application ought to have been made to the Small Cause Court in Calcutta, and not to the Judge of Shahabad. It seems to us that any other construction of the law would give rise to great confusion. For all purposes, except that of execution under the certificate and copy of decree, and, as already pointed out, for some purposes connected with execution, the decree remains in the original Court which passed it. A copy only of the decree and none of the proceedings in the suit are transmitted u/s 285. The decree itself and the whole record of the suit remain in the original Court, and we think the Court which receives the decree for execution should execute it exactly as it receives it, or not at all. We think it would lead to the greatest difficulties if, in one Court, one party was recognized as being the holder of, and having the control over, a decree; and, at the same time, in another Court, another party was recognized as being in that position. Further, u/s 208, it is entirely in the discretion of the Court to grant the application of the assignee or not, and the application is one which, under some circumstances, clearly ought not to be granted, and in no instance ought it to be granted merely as a matter of course. Now, the only Court which can have the proper knowledge and materials to deal with the application is the Court which tries the suit and passes the decree. Looking, therefore, generally to the terms of the law, and particularly to those of section 290, which show that, even for some purposes connected with execution, the proceedings remain in the original Court, we think that this application was wrongly made in the Shahabad Court, and ought to have been made in the Small Cause Court at Calcutta. Had it been likely that the original decree-holders were about to proceed to execute the decree in fraud of the assignee, the latter might probably by an application to the Court of Shahabad have stayed the execution pending his application to the Court of Small Causes.

3. The result is that Sheo Narayan not being on the record and not having even obtained the permission which is necessary to enable him to execute the decree, he had no right to appear in the Court below or in this Court. Without, therefore, entering into the merits of the case we dismiss this appeal with costs. Appeal No. 121 is admittedly governed by this decision, and is also dismissed with costs.