(1917) 12 CAL CK 0015

Calcutta High Court

Case No: None

Ram Lal Mandal and Others		APPELLANT
	Vs	
Asutosh Mandal and Others		RESPONDENT

Date of Decision: Dec. 10, 1917

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 15, Order 21 Rule 19, Order 21 Rule 19(b)

Citation: 44 Ind. Cas. 445

Hon'ble Judges: Teunon, J; Newbould, J

Bench: Division Bench

Judgement

1. This appeal arises out of an application for execution. It appears that a co-sharer landlord brought a suit for rent against tenants 21 in number and made his co-sharers parties to the suit. They were defendants Nos. 22 to 41. In the result there was a decree in favour of the plaintiff against defendants Nos. 1 to 21 for the sum of Rs. 76 10 haras and in favour of the pro forma defendants Nos. 22 to 41 against the same tenants, defendants Nos. 1 to 21, for the sum of Rs. 380 3 gandas and 2 haras. In the present proceedings the pro forma defendants Nos. 34 to 88 have applied for execution in respect of a sum of Rs. 285 and odd annas against defendants Nos. 7 to 14 or according to the Munsif, against Nos. 7 to 21.

2. In this appeal in view of the provisions of Order XXI, Rules 15 and 19, two objections have been taken. It is contended in the first place that the applicants should have prayed for execution of the whole decree made in favour of the defendants Nos. 22 to 41, that is to say, for execution in respect of the sum of Rs. 380 odd annas. Bat as a matter of fact the sum in respect of which the respondents-decree-holders have applied for execution represents, we are now informed, the whole balance of that decree now outstanding, credit having been given for a sum of Rs. 95 and odd annas realised by execution on a previous application. This objection, therefore, necessarily fails.

3. The second objection taken arises out of the fact that of the defendants against whom the decree has been made, defendants Nos. 1 to 14 hold a dual position. As defendants Nos. 1 to 14 they are tenants, and reckoned as pro forma defendants Nos. 28 to 41 they are co-sharer landlords. The decree that has been made is in fact in favour of defendants Nos. 1 to 14 and 6 others and is also made against themselves and 7 others. The result is that just as defendants Nos. 7 to 14 against whom execution is being taken and defendant No. 6 owe something to the executing decree-holder defendants Nos. 34 to 38 (who are also tenant defendants Nos. 1 to 5), so defendants Nos. 1 to 5, that is, the executing decree-holder defendants Nos. 34 to 38 also owe something under this decree to decree-holder defendants Nos. 27 to 41, who are in fact also tenant defendants Nos. 6 to 14. It would seem, therefore, that under Order XXI, Rule 19 (b), both parties being entitled to recover sums of money each from the other, the respective amounts due from each to the other should first have been ascertained and execution thereafter proceeded for the difference, the" Court under the provisions of Order XXI, Rule 15, making such order as it deemed necessary for protecting the interests of the persons who had not joined in the application. When the application goes back to the first Court the executing Court will take evidence and ascertain, if the parties are not agreed, what sum or share is in fact now payable under the decree by the executing decree-holders (defend -ants Nos. 34 to 38, otherwise defendant''s Nos. 1 to 5) to the other decree-holder defendants and after deducting that sum from the whole amount now due from the defendants Nos. 1 to 21 will realize the balance so ascertained.

4. We now learn that the money claimed, Its. 285 odd, has already been paid into Court. In that case the executing Court will proceed to apportion it among the decree-holders on determination of their shares.

5. With these observations we dismiss this appeal, and as we consider that the appellants-defendants Nos. 9 to 11 are substantially in the wrong we direct that they do pay the costs of this appeal. We assess the hearing fee at two gold mohurs.

6. The appeal having been disposed of, the connected Rule No. 49 of 1916 is discharged.