
Gnanendra Kumar Roy Choudry and Others Vs Rishendra Kumar Roy Choudry and Others

Order No. 487 of 1915

Court: Calcutta High Court

Date of Decision: Jan. 28, 1918

Judgement

1. This was an appeal from an order of A.H. Cuming, Esq., District Judge of Zillah 24-Pergunnahs, dated the 1st July 1915, reversing an order of

Babu Rajendra Lal Sadhu, Munsif at Baruipur, dated the 26th March 1915. The idol Shamsundar Jue is a- tenant under the Plaintiffs. A suit for

rent was brought in respect of the jumma of the idol against the shebait in their personal capacity. The suit was dismissed on 24th February 1910.

There was an appeal and the case was remanded on 2nd February 1911 allowing the Plaintiffs to implead the idol by amending their plaint. The

suit was decreed against the idol after remand on the 28th November 1911. The lower Appellate Court called for the records of the rent suit and

passed an order on the 18th September 1912 confirming the decree of the Court of first instance. Application for execution was made on the 23rd

November 1914. The application was made against the three judgment-debtors although the total number of shebait was seven. Some properties

which were the personal properties of the shebait were then attached. To this the Defendants filed an objection in December 1914. The Plaintiffs

then amended their application for execution on the 14th January 1915 and filed a list of new properties by an ordinary petition not signed by the

decree-holder and only verified by a karpardaz. The Defendants contended that the application for execution cannot be amended and it is barred

by limitation. The Court of first instance overruled the contentions of the judgment-debtors and on appeal the District Judge reversed the decision

of the first Court. The District Judge held as follows :-

The judgment-debtors now contend that after the period of limitation is over new properties cannot be brought in. What the judgment-debtors

contend is that after an application for execution is once registered it cannot be amended. The learned Munsif decided this point against the

judgment-debtors and allowed execution to proceed and the judgment-debtors have appealed. Their main contention is that once an application

for execution has been registered it cannot be amended. This point has been discussed and decided in the Full Bench ruling in Asgar Ali v.

Troylukho Nath ILR 17 Cal. 631 (1890) and the point has been specifically discussed by his Lordship the Chief Justice in pp. 635 and 636.....

Sec. 245 (old Code) corresponds to Or. 21, r. 17, of the present Code. I have compared the two sections and as far as the present point now

under discussion is concerned no material alteration has been made in the law. I must therefore hold that the Court had no power to amend the

application for execution and, therefore, that the present amended execution proceedings so far as they concern the properties which have been

entered in the amendment cannot proceed. The contention was that at the time when the amendment was applied for the decree would be barred

by limitation. It is not however necessary for me to determine this point as I have decided that the amendment cannot be made. This appeal must

therefore be decreed with costs.

2. The decree-holders then preferred the present appeal.

3. Babu Surendra Madhab Mullick for the Appellants.-The new CPC has given the Courts powers to allow amendment of the application for

execution vide Or. 21, r. 17, C.P.C. Sec. 245 of the old Code did not confer any such power. The Full Bench case of Asgar Ali v. Troylukho

Nath ILR 17 Cal. 631 (1890). being decided on the old Code has no application in the present case. The application for execution being filed in

the first instance within time no question of limitation arises in this case.

4. Babu Kritis Chandra Chakrabarti (with him Babus Jogesh Chandra Dey and Shashendra Kumar Rai Chowdhuri) for the Respondents.

5. There is no difference between sec. 245 of the old Code and Or. 21, r. 17 of the new Code. There are some verbal alterations. The Full Bench

case of Asgar Ali v. Troylukho Nath ILR 17 Cal. 631 (1890) is on all fours with the present case.

[TEUNON, J.-Sec the cl. 18 C.L.J. 538 (1913) of Or. 21, r. 17-the word ""amended"" is used.]

6. Such amendment refers to one before registration of the application for execution. It was also contemplated under the old Code, vide Asgar Ali

v. Troylukho Nath ILR 17 Cal. 631 (1890).

7. Babu Jogesh Chandra Dey followed on behalf of the Respondents.

8. There is another Full Bench case. Vide Pudmanand v. Anant Lal ILR 34 Cal. 20 (F.B.) : S.C. 11 C.W.N. 38 (1906).

[TEUNON, J.-It is not in point.]

9. The ruling in Salimullah v. Sain-addi 18 C.L.J. 538 (1913). will clear my points. The Full Bench case of Asgar Ali v. Troylukho Nath ILR 17

Cal. 631 (1890) is still in force. The High Court prohibits the reception of additional list of immoveable properties vide High Court Circular

Orders, Vol. I, p. 57, r. 10. Besides the application for amendment is not signed by decree-holders.

[TEUNON, J.-We are not bound by the Circular Orders.]

10. The real point is limitation.

11. Final judgment against the Thakoor was passed on 28th- November 1911. The limitation runs from this day, vide Law v. Benarshi Proshad 19

C.W.N. 287 (1914). As the suit was for rent the law of limitation is provided in Bengal Tenancy Act, Sch. III, Art. 6, cl. ILR 17 Cal. 631 (1890).

[TEUNON, J.-Application was originally filed on 23rd November 1911.]

12. The amendment was made on 14th January 1915, three years after the decree.

13. The JUDGMENT OF THE COURT was as follows :-

This appeal arises out of certain proceedings in execution. The decree in question being a rent decree was obtained against certain persons as

shebait of a certain thakur on the 28th November 1911. The application for execution was made on the 23rd November 1914. On its face the

application was one in accordance with law. Later, on objection taken by the judgment-debtors, it was discovered that against the properties

specified in the list furnished under Or. XXI, r. 13, proceedings could not be taken and accordingly on the 14th January 1915, the decree-holder

made an application to the Court requesting the Court to accept a further list of properties and praying that execution should proceed by

attachment and sale of those properties. It has been held by the first Appellate Court that the application having been admitted and registered the

proposed amendment could not be accepted and that it would be necessary for the decree-holder to make a fresh application in execution. In

coming to this conclusion the Court relied upon the decision of a Full Bench of this Court in Asgar Ali v. Troylukho Nath ILR 17 Cal. 631 (1890)

and in this Court, we may observe, further reference has been made to the case of Salimullah v. Sainaddi 18 C.L.J. 538 (1913). But (he present

case may be distinguished from both these cases in that in those two cases the application as originally made was one not made in accordance with

law and that it contained no list of properties against which the proceedings were intended to be taken, in the present case, as we have already

pointed out, the matter is different. Here there was a list of properties, the application was one made in accordance with law and it was only on the

objection taken by the judgment-debtors that it was discovered that against those properties execution could not proceed. We are not of opinion

that in a case such as this the decree-holder should be confined to the properties he had originally specified and we think that it was open to him to

ask the Court to proceed against the properties specified in his further and supplementary list. We are further of opinion that that list should be

taken as part of the original application under the provisions of Or. 21, r. 17 (2), or if a fresh application were at all necessary that that application

should be treated as one made in continuance of the application first presented on the 23rd November 1914.

14. In this view no question of limitation arises and we therefore set aside the order of the first Appellate Court and decree this appeal with costs.

The decree-holder will now be at liberty to proceed in execution as on his application of the date November 1914. We assess the hearing fee at

three gold mohurs.