
Sm. Hafijan Bibi and Others Vs S. K. Abdul Jabbar and Others

None

Court: Calcutta High Court

Date of Decision: Dec. 12, 1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Section 2, 47, 49, 50

Hon'ble Judges: Manas Nath Roy, J

Bench: Single Bench

Advocate: Sudhir Kumar Acharya and Kiran Chandra Mitra, for the Appellant; Sakti Nath Mukherjee, Tarun Kumar Chatterjee and Satyajit Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Mr. Justice Manas Nath Roy

1. This appeal from appellate order, is at the instance of unsuccessful judgment debtors, in Miscellaneous Appeal No.47 of 1963 dated 30th April,

1964, made by the learned District Judge, Bankura, setting aside thereby the judgment and order dated 16th September, 1963, made in J. Misc.

Case No.100 of 1962, by the learned Subordinate Judge, Bankura.

2. On or about 12th November, 1956, Title Suit No.77 of 1956 for partition, was filed by the decree holder respondents herein against one

Haliman Bibi, being defendant No.4 amongst others and the predecessor-in-interest of the appellants herein. In the said suit, the plaintiffs claimed

their 6 annas 8 gandas share on partition by metes and bounds and for separate possession and the suit was valued at Rs.4,000/- . The suit was

decreed in the preliminary form on compromise, on 27th May, 1959 and by the said decree, it was held that Defendant No.4 Haliman Bibi would

occupy a house during her life time as a licensee. Thereafter, on or about 16th August 1961, on the basis of a report of the Commissioner of

Partition, a final decree was passed.

3. The decree-holder respondents, thereafter, instituted Title Execution Case No.4 of 1962 for having the said decree executed. As in the

meantime, Haliman Bibi, the defendant No.4 had died, her heirs being appellants herein were substituted. Those heirs filed an application u/s 47 of

the Code of Civil Procedure, contending, inter alia, amongst other that the Title Execution Case in question was not maintainable against them. In

support of such contentions, it was firstly submitted that as they were not in possession of the properties as the heirs of defendant No.4, so the

decree was not executable against them. It was secondly contended that Md. Sayed, one of the decree-holders had left for Pakistan in March,

1950 and before that he made an oral gift of his share in favour of his mother-in-law Haliman Bibi in 1950. Such gift was contended to be followed

up with delivery of possession and it was also submitted that since then the said Haliman Bibi was in possession by constructing 2 huts. It was

further contended that Haliman Bibi viz., the predecessor-in-interest of the appellants herein, was a bare licensee in the suit property and so her

interest in the suit property came to an end on her death.

4. On evidence, the learned Subordinate Judge disbelieved the story of oral gift and as such negated the first contention on behalf of the

appellants herein. But he upheld the second contention and held that Haliman Bibi had the interest of a bare licensee in the suit property, and as

such her interest came to an end on her death and so her heirs could not be regarded as legal representatives and as such they could not be

substituted in her place. In that view of the matter, it was observed that the connected execution case was not maintainable against the appellants

herein and as such the learned Subordinate Judge allowed the application u/s 47 of the Code of Civil Procedure.

5. An appeal was taken and a cross-objection was preferred against the said determination. The story of oral gift was also disbelieved by the

learned District Judge and that too on appropriate consideration of the relevant evidence as led. Thus, on the question of oral gift, the findings of

the learned Courts below are same, similar and concurrent and as such no interference with such findings in this jurisdiction is required or called for

or should be made ordinarily.

6. On the other question regarding the cessation of the interest of Haliman on her death, the findings of the learned courts below are not

concurrent. As mentioned hereinbefore, the learned Subordinate Judge held that the interest of Haliman as a bare licensee, in the suit property,

came to an end on her death but such findings on the basis of the determinations in the case of (1) Baliram Hari v. Mukinda Kissen, AIR 1951

Nagr 145, and on construction of section 50 of the CPC has been overruled. In that case it has been observed that a person who is in possession

of the property in respect of which a decree has been passed, but who claims no title from the deceased judgment-debtor, must be treated as a

legal representative at least for continuing the execution u/s 50 of the CPC and in that view of the matter, as stated hereinbefore, the learned

District Judge has reversed the findings of the learned Subordinate Judge to the effect that the application was not maintainable.

7. On the pleadings it appears that Md. Sayed gave his share of the property by an oral gift to Haliman Bibi viz., the mother-in-law of Hafijan Bibi

in January 1950 and in 1950 the huts as referred to above were constructed. The said Md. Sayed left for Pakistan and has not returned. The fact

of oral gift as stated hereinbefore was not accepted to be genuine and there being no contradictory findings by the learned Courts below, I do not

intend to go into those facts any further and in fact in this jurisdiction I am not required to do so ordinarily. Thus, the other question which is

required to be considered is, whether Haliman's interest as claimed as a bare licensee had expired or ceased on her death.

8. Mr. Acharya submitted that when the defendant No.4 Haliman Bibi was a licensee as per the compromise decree in question, the learned

District Judge should have held that the Title Execution Case No.4 of 1962 was not maintainable against her alleged heirs viz., the appellants

herein, as on the death of Haliman, her interest as licensee came to an end in law. To substantiate his arguments, he relied on the definition of "legal

representative" in section 2(11) of the CPC and on section 50 of the same, regarding the extent of the application and applicability of the said

section in case of the appellants herein, who as submitted by him were legal representatives of Haliman, but had a restricted interest. It was also

submitted by him that the determination in the case of Baliram Hari v. Mukinda Kissen (supra), has no application to the facts of the present case.

He submitted that the learned District Judge should have held that the appellants were not in possession of the suit property either as heirs of

defendant No.4 Haliman or as intermeddlers with her interest.

9. In support of his contentions as aforesaid, Mr. Acharya first placed reliance on the determination in the case of (2) Chinnan and Others Vs.

Ranjithammal, , wherein it has been observed that if a man gives a license and then parts with the property over which the privilege is to be

exercised, the license is gone. A license is not annexed to the property in respect of which it is enjoyed, nor as it a transferable or heritable right,

but is a right purely personal between grantor and the licensee. Unless a different intention appears, it cannot be exercised by the licensee's

servants or agents. It has also been held therein that the representatives of a tenant on sufferance are mere trespassers since they cannot be

regarded as succeeding to any interest in the tenancy; and what is true of a tenant on sufferance is true also of a licensee. From the date of

licensee's death the possession of his heirs becomes adverse to the owner of the property. Thus, the determination as above shows that the license

goes with the lapse and on such Mr. Acharya sought to argue that on the death of Haliman, her right as licensee had also lapsed. It was also

submitted by Mr. Acharya on the basis of the decision in the case of (3) Nagendra Nath Roy v. Haran Chandra Adhikary, 37 CWN 758 wherein

it has been observed that a mere claim for restitution of a certain sum of money is not such an equity as would be available against the assignee of a

decree u/s 49 of the CPC that the appellants herein could not be regarded on the facts of the case, as persons coming within the definition of "legal

representative" u/s 2(11) of the Code of Civil Procedure. In that case S had obtained a decree for a certain sum of money against N. S executed

the decree and got the money from N. On appeal, this decree was reversed. N applied for restitution against S by refund of the money S had

taken. In the meantime, S had obtained another decree against N. After the application for restitution had been made, S assigned the second

decree to H who took with notice of the claim for restitution and it has been observed that N was not entitled to claim a set off of the sum claimed

in restitution against the amount of the second decree. It has also been observed in that case that when on account of death, a creditor becomes

heir of a debtor or a debtor becomes heir to a creditor, that is to say, the two opposite characters of debtor and creditor become united in the

same person, the obligation to pay is extinguished. It has further been observed that in order that the person who intermeddles with the estate of

another may be held to be the legal representative of the latter within section 2(11) of the Code of Civil Procedure, it is necessary that he should

retain possession of the properties of the deceased with the intention of representing the estate. The determination as mentioned hereinbefore was

made on a reference to the case of (4) Satya Ranjan Chowdhury v. Sarat Chandra Biswas, 30 CWN 565, to which Mr. Acharya also made a

reference. He also submitted on the basis of the determination as aforesaid, that for the purpose of finding out whether the interest exists or is

extinguished on the death of the licensee, as was the case of Haliman the intention of representing the estate must be found out and the

determination should be made on the basis thereof.

10. It was further submitted by him that when the appellants herein were holding the property in question as the heirs of the deceased Haliman,

whose interest as licensee had ceased on her death, the holders should or could at best be treated as trespassers, and posed a question as to

whether in that case the decree can be executed against such trespassers. On construction of section 2(11) and section 50 of the Code of Civil

Procedure, he argued that when the appellants herein were holding the properties as such trespassers, so the execution proceedings was not

maintainable against them. It was also submitted by him that when intermeddlers viz., persons like the appellants herein, are in possession of the

estate of a judgment debtor, they cannot be held responsible or liable in any manner of manner in an execution proceedings. In support of such

submissions, reliance was placed on the determinations in the case of (5) Alagiri Chetty and Another Vs. Muthuswami Chetty and Others, ,

wherein it has been observed that a license does not create an interest in the land as it is merely leave to do a thing lawfully, which otherwise would

be unlawful and it is thus a matter purely personal between the grantor and the guarantee of the license. Such license must be held to have elapsed

with the death of the licensor. Similarly, reliance was also placed on the determinations in the cases of (6) *Tamiz Bano Vs. Nand Kishore* and

Another, and (7) *Rengathammal Vs. Venkatachariar and Others*, wherein similar views have in effect also been expressed. In the Allahabad case,

in a suit on a bond against the widow and sons of the deceased executant, the widow defended the suit and pleaded that her dower debt was

Rs.25,000/- and that the remaining heirs of her husband had sold his property to her in lieu thereof. The trial court found that no dower debt had

been proved, and decreed the suit. This determination was upheld in Appeal and thereafter on Second Appeal. The determination in the Madras

Case as cited establishes that when persons are impleaded as legal representatives, it must be prima facie established that the deceased has an

estate before the first definition in section 2(11) can be applied.

11. Those apart, Mr. Acharya contended that since the appellants herein were not or could not represent the estate of the deceased defendant

No.4, *Haliman Bibi*, so in terms of section 2(11) of the Code of Civil Procedure, the application was also not maintainable or entertainable against

them. In support of such submissions, he relied on the determination of Supreme Court in the case of (8) *The Andhra Bank Ltd. Vs. R. Srinivasan*

and Others, . In that case the term legal representative as in section 2(11) has been interpreted and it has been observed that even a legatee who

obtains only a part of the estate of the deceased under a will can be said to represent his estate and is therefore a legal representative under the

said section.

12. Mr. Chatterjee, being led by Mr. Sakti Nath Mukherjee, argued that the appellants herein would come duly and squarely within the definition

of "legal representative" in section 2(11) of the Code of Civil Procedure. In support of such submissions, he relied on the determination in the case

of (9) *The Kalyanmal Mills Ltd. Vs. Volimohammed and Another*, . In that case, it has been observed that the term "legal representative" means

not only a person, who in law represents the estate of a deceased person, but also includes any person who intermeddles with the estate of the

deceased, although such intermeddler may not in law represent the estate of a deceased person. It has also been observed in that case that

although a person in unlawful possession been observed in that case that although a person in unlawful possession of a estate of a deceased can be

proceeded against as a defendant, he does not get a right to continue the suit as a plaintiff by virtue of such unlawful possession. In view of the

above, it was submitted by Mr. Chatterjee that the appellants herein were liable to be proceeded with in the execution proceeding in terms of the

definition of ""legal representative"". That apart, Mr. Chatterjee strongly relied on the determinations in the case of Baliram Hari v. Mukinda Kissen

(supra) and on which, as mentioned hereinbefore, the learned District Judge had also placed great reliance.

13. Mr. Chatterjee further contended that, to decide whether the appellants herein would come within the definition and purview of section 2(11)

of the Code of Civil Procedure, two considerations would be relevant and germane. Firstly, on a reference to the judgment of the learned Courts

below, he pointed out that the judgment-debtors were in possession when Haliman was dead and submitted that to find out the real character for

the purpose of the section and maintainability of the application not only legal but also possessory title will have to be taken into consideration. He

submitted that since Haliman's possessory right and title has been intermeddled, so in terms of the determination of the Nagpur High Court as

aforesaid, the persons in possession viz., the appellants in the instant case in the estate of the deceased, should be regarded as intermeddlers and to

find out such a character it was also submitted by him that a liberal interpretation should be adopted. To find out the tests as to who should be

considered as a intermeddler. Mr. Chatterjee relied on the case of (10) Kusum Bandhu Chakravartty v. Ramdayal Bhattacharjee, AIR 1924 Cal.

662. On the basis of such determination and also on the basis of the determinations and also on the basis of the determination in the case of

Kalyanmall Mills Limited, Indore v. Volimohammed & Anr. (supra), he submitted that the appellants herein should be regarded as intermeddlers

and as such the application has been rightly held to be maintainable by the learned District Judge. The apart, he submitted, on the analogy of the

decision of the Supreme Court in the case of (11) Raghunath Gopal Manjire and Another Vs. The Competent Authority and Others, , wherein it

has been observed that a person remaining in occupation of the premises let to him after the determination of or expiry of the period of tenancy is

commonly, though in law not accurately, called ""statutory tenant"", has no estate or interest in the premises occupied by him. He has merely the

protection of the statute and that he cannot be turned out so long as he pays the standard rent and permitted increase if any, and performs the other

conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal and it is not capable of

being transferred or assigned, and devolves on his death only in the manner provided by the statute, that the appellants herein were thus rightly held

to be intermeddlers in possession of the estate of the deceased Haliman and the application in question was as such rightly held to be maintainable.

14. Mr. Chatterjee also placed reliance on the case of (12) Nair Service Society Ltd. Vs. Rev. Father K.C. Alexander and Others, , in support of

his contentions that even if the appellants viz., the heirs of deceased Haliman were trespassers, the action against them was maintainable. That

apart, on the question of and the incidence of possessory right and title he also relied on the cases of Rangathammal v. Venkatachariar (supra),

Alagiri Chetty & Anr. v. Muthuswami Chetty & Ors., (supra) and Tamiz Bano v. Nand Kishore & Anr. (supra).

15. Mr. Acharya, in reply, further placed reliance on the determinations of this Court in the case of (13) Asha Gita & Anr. v. Sipra Dutta & Ors.,

80 CWN 187. In that case, during the pendency of the suit for ejectment of the tenant, governed by the West Bengal Premises Tenancy Act,

1956, the tenant died and only those heirs of the tenant who were ordinarily residing with him were substituted and it has been observed that all the

heirs of the tenant were necessary parties and ought to have been substituted; but as the plaintiff acted in the bonafide belief that in view of the

definition of "tenant" in section 2(h) of the West Bengal Premises Tenancy Act it was sufficient to bring only the heirs who were ordinarily residing

with the tenant on the record, plaintiff landlord was allowed to add the remaining heirs as party defendants. As the citation was made by Mr.

Chatterjee for the purpose of and in support of his contentions that on the death as in the instant case the heirs were held as trespassers and the

application in question was thus duly found by the learned Court to be not maintainable.

16. The definition of "Legal Representative" in section 2(11) of the CPC read with section 50, thus, will have to be construed and that too for the

purpose of finding out whether under the said definition and the determination as made thereunder, the appellants could be proceeded with in the

execution proceedings, being the legal representative of Haliman Bibi. The section empowers a decree-holder to proceed in execution against the

legal representative of a judgment-debtor when the judgment-debtor dies after the decree. The death of defendant after hearing of the suit and

before the decree would not affect the validity of the decree and can be executed against the legal representative of such defendant. The extent of

liability of a legal representative would be to the extent of the properties which would come to his hand. In section 2(11) as aforesaid the term

intermeddler" has been used. A mere intermeddler, without any right to the property, as observed in the case of (14) Babu Chandrika Prasad

Singh Vs. Maharaja Kesho Prasad Singh, , cannot continue the lis by virtue of his possession. At the same time mere possession of deceased

defendant's property as trespasser, in terms of the determination in the case of (4) Satya Ranjan v. Sarat, 30 CWN 565, make the intermeddler

his legal representative if he has no intention of representing the estate. Mr. Chatterjee has rightly contended, on the basis of the cases as cited by

him that a liberal construction of the term must be followed. In fact in the case of (15) C. Krishnamachariar Vs. B. Lakshmi Ammal, , it has been

observed that an intermeddler though a stranger becomes a legal representative and he need not be the beneficial owner. On the basis of the

determination as above and following the determination in the case of Kalyanmal Mills Ltd, Indore v. Volimohammed & Anr. (Supra) and

Baliram Hari v. Mukinda (Supra), it can be safely observed that the appellants herein have been appropriately held to be and coming within the

definition of ""legal representative"" as intermeddler as in section 2(11) of the Code of Civil Procedure. Over and above all these, the character,

enjoyment and possession of the appellants in the instant case would also bring them within the meaning of the provisions in the said section 2(11).

17. Thus the argument of Mr. Chatterjee succeed and those of Mr. Acharya fail and as such, the appeal also fails and the same is dismissed. There

will be no order as to costs.

18. The determinations as made by the learned lower Court are affirmed.