(1913) 08 CAL CK 0017

Calcutta High Court

Case No: Appeal from Order No. 426 of 1911

Raj Kumar Girja Nandan Singh		APPELLANT
	Vs	
Kanhaya Prosad Sahu and Another		RESPONDENT

Date of Decision: Aug. 1, 1913

Final Decision: Dismissed

Judgement

1. The judgment-debtor is Appellant; he borrowed money from Gajadhar Pershad Sahu, Baldeo Pershad Sahu, and Mahadeo Peishad Sahu, and executed a bond in their favour. On August 5th, 1904, an ex parte decree on the bond was passed in favour of Gajadhar and Mahadeo, and the three sons of Baldeo who was then dead. Baldeo''s sons were described in the plaint as follows :--Jagannath Pershad Sahu, major, Mohan Pershad Sahu, minor, Kanhya Pershad Sahu, minor, under the guardianship of Jagannath Pershad Sahu, his full brother. No steps were taken in execution of the decree until May 11th, 1910, when Kanhya filed an application for execution alleging that he had attained majority on June 5th, 1907.

2. The judgment-debtor asserted that Kanhya had attained majority more than three years before the date of his application, and further urged that the application was barred because a discharge could have been given to him without the applicant''s concurrence. He pressed this contention on three grounds, firstly, because the applicant and his brothers formed a joint family, and Jagannath as karta of the family could have given a discharge : Secondly, because the money was lent by a banking firm and any one of the partners could have given a discharge ; and, thirdly because the banking business was in the hands of a Receiver appointed by the Court, and the Receiver could have given a discharge.

3. The learned Subordinate Judge held that Kanhya had established that he attained majority in June 1907, so that his application for execution was made within three years of the date on which his disability ceased. We have read the evidence and think it warrants that finding, and we hold that Kanhya became of age in June 1907.

4. The learned Subordinate Judge went on to give reasons for holding that while Kanhya was a minor there was no one who could give a discharge without his concurrence, and therefore he could apply for execution within three years from the date on which he became a major.

5. We think, however, that this finding is wrong in respect of the third ground of the judgment-debtor''s contention.

6. It appears that the suit in which the decree against Appellant was passed was filed on June 21, 1904, through Dr. Hindmarsh as Manager and ammukhtear of Gajadhar, Mahadeo, Jagannath, Mohan and Kanhya. In the same year a suit was instituted by Gajadhar against Mahadeo, with Jagannath, Mohan and Kanhya and in that suit a Receiver was appointed by the District Judge on September 15, 1905. The person chosen for appointment was Dr. Hindmarsh, and the order makes it clear that he was put in charge of the whole banking business with all its "pending and impending litigation." Dr. Hindmarsh was succeeded by Mr. Stevens on June 26, 1906, and on January 17, 1910, Babu Bhubaneswar Bose was appointed Receiver. This Bhubaneswar Babu was still Receiver when Kanhya made his application for execution, for mention is made of him in the last column of the petition.

7. It has not been suggested that at any time the banking business passed out of the hands of the Receiver, and we must hold that there was a Receiver in charge from September 15, 1905, onwards.

8. The learned Subordinate Judge has held that this particular debt is not proved to have vested in the Receiver. We think however that this view is wrong : it was not necessary for each individual debt and decree to be mentioned : the words of the District Judge are very wide, and must be held to include this decretal debt. This is the more certain when it is remembered that Dr. Hindmarsh was chosen to be Receiver because he had been acting as Manager, and as Manager he had filed the suit in which the decree was passed against the appealing judgment-debtor.

9. The powers of a Receiver were discussed at length in the case of Jagat Tarini Dasi v. Naba Gopal Chaki I. L. R. 34 Cal. 305 (1907), and it was held that a Receiver could sue in his own name ; and in commenting on the duties performed by a Receiver the learned Judges remarked: "All suits to collect or obtain possession of the property must be prosecuted by the Receiver, and the proceeds received and controlled by him." If the Receiver has the power to sue in his own name we do not think there can be any room for doubt that he can himself give a discharge. He is not fettered by the restrictions which are laid upon one of several joint creditors, or upon a next friend. The Court may confer upon him all the powers of realisation that an owner has, and in the present case the District Judge did so. We hold therefore that this decretal debt vested in the Receiver when he was appointed on September 15, 1905 ; and from that date onwards he was competent to give a discharge. When once the debt had vested in him the minority of one of the decree-holders ceased to have any

importance, for the rights of the minor no less than the rights of the majors were all absorbed by the Receiver.

10. It is not necessary to discuss the other points. We hold that Kanhya''s application for execution was barred by limitation, and we therefore decree this appeal; the order of the lower Court is set aside, and the application for execution is rejected. The Respondent will pay costs in both Courts. The costs in this Court are assessed at 5 gold mohurs.