Dhirendra Nath Sarkar and Others Vs Nischintapore Company by their Attorney and Manager Mr. K.M. Hamilton

None

Court: Calcutta High Court

Date of Decision: Aug. 17, 1916

Citation: 36 Ind. Cas. 398

Hon'ble Judges: Cuming, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

1. This is an appeal by the judgment-debtors against an order for execution of a decree for arrears of rent. On the 25th February 1911, the

respondents as plaintiffs instituted a suit for rent against the appellants as defendants, who held under them three distinct tenancies under three

separate contracts. In ordinary course the landlords would have instituted three different suits for rent in respect of the arrears due But they

preferred to institute one suit for the recovery of the arrears, as they were entitled to unite in one suit different causes of action against the same set

of defendants under Rule 3, Order II, of the Code of Civil Procedure. They realised, however, that if a decree was obtained for the entire sum

due, such decree could not, as held in a long line of authorities in this Court, be executed as a decree for rent against any of the tenures Malick

Chand Das v. Satish Chandra Das 3 Ind. Cas. 306 : 11 C.L.J. 56 : 16 C.W.N. 335 and Rashmohni Dasi v. Debendra Nath Singh Roy 13 ind.

Cas. 604 : 16 C.W.N. 395. They accordingly pray, ed that the decree might specify the sums due in respect of each of the tenancies and that an

order might be made for the realisation of the sums in arrear from the respective tenancies. This was carried out, and the result was that on the 5th

June 1911 a decree was drawn up which specified that a certain sum, which, for the sake of brevity, may he, called A, was to be realised by sale

of tenure X, that a similar sum B was to be realised by sale of tenure Y, and that a third sum C was to be payable by the judgment-debtors. There

was also a direction that in the event of non-satisfaction of the sums due in respect of X and Y, the balance might be recovered from the person

and property of the judgment-debtors. On the 27th August 1913 the decree-holders applied, for execution of the decree. They stated specifically

that in respect of the third tenancy a separate decree had been passed and prayed, first, that the sum due there from might be realised by

attachment and sale of the moveable properties of the judgment-debtors; and secondly, that if the whole amount due was not realised, the balance

might be recovered by attachment of their persons. It is remarkable that in the 7th column of the application, for execution, the sum shown as due

was the sum realisable in respect of the third tenancy alone; in other words the application for execution sought relief only in respect of the sum

decreed with regard to the third tenancy. It is not necessary for our present purpose to narrate what took place on the basis of this application, as

we are now concerned with an application for execution made on the 16th September 1914. The decree-holders stated therein that a decree had

been passed in respect of the first tenure for a certain sum, that a decree had been passed in respect of the second tenure for another sum and that

a decree had been passed in respect of a third tenure for a different sum."" They prayed that the first two sums due might be realised by sale of the

first two tenancies respectively and that if the whole amount was not thereby obtained, processes might issue against the persons and other

properties of the judgment-debtors. The judgment-debtors contended that the application was barred by limitation, in so far as the decree-holders

sought to realise by sale of the first two tenures the sum directed by the decree to be levied therefrom. The Subordinate Judge has over ruled this

contention. The question for determination, consequently, is whether the application for execution is barred by limitation on the ground assigned by

the judgment-debtors.

2. The answer to the question in controversy depends upon the true construction of Article 18a of the First Schedule to the Indian Limitation Act,

1908. The clauses relevant for this purpose are those numbered 1, 5 and 6 in the third column. The first Clause provides that an application for

execution of a decree of any Civil Court not provided for by Article 183 or by Section 48, CPC of 1908, must be made within three years from

the date of the decree. As the application for execution now under consideration was made after three years from the date of the decree, the first

Clause by itself is of no assistance to the decree-holders. Reliance is, consequently, placed on their behalf on Clauses (5) and (6). Clause (5) refers

to a case where an application has been made in accordance with law to the proper Court for execution of the decree. Clause (6) applies to a case

where notice has been issued to the person, against whom execution is applied for, to show cause why the decree should not be executed against

him when the issue of such notice is required by the Code of 1908; that is, in cases where the application for execution is made after the lapse of a

year from the date of the decree or is made against the legal representatives of a deceased judgment debtor. The decree-holders contend that on

the 27th August 1913 an application was made in accordance with law to the proper Court for execution of the decree and that they are

accordingly entitled to the benefit of Clause (5). They further contend that on such application for execution, notices were issued to the judgment-

debtors on the 24th September 1913, and that they are thus entitled to the benefit of Clause (6). The appellants contend that neither Clause (5) nor

Clause (6) is of real assistance to the decree-holders, because they took steps in respect of the decree for rent of the third tenancy and not with

regard to the decree for rent of the first and the second tenancies. The contention in substance is that although there is nominally one decree in this

litigation, there are in substance three decrees in one sheet of paper The judgment-debtors argue that the term decree as used in Clauses (5) and

(6) must be read along with the term ""decree"" in column 1 of the Article and that the decree-holders are not entitled to the benefit either of Clause

(5) or of Clause (6) on proof that they have taken action with regard to what is in essence a distinct decree from the two decrees they now seek to

enforce. We have not been able to trace any authority directly in point; but we are of opinion that the contention of the appellants is supported by a

principle. which underlies the decision of the Full Bench in Wise v. Rajnarain Chuherburty. It may be observed that so far back as 1866 it was

recognised by this Court in the Case of Stephenson v. Annoda Dossee that there might be nominally one decree passed in a suit, which is

essentially of a composite character and contains a number of decrees: it may be that some decrees, though based nominally on one document, are

in reality separate decrees against separate individuals. In such cases, the Court might and properly would consider them to be separate, and in

execution put the law of limitation in force against different defendants as if they were separate."" This doctrine was ignored in the case of Mohesh

Chunder Chowdhry v. Mohim Lal Sircar 8 W.R. 80, which ruled that when a decree has been passed against several defendants, each of whom is

declared to have a separate liability in respect of a definite amount, execution against one or more of such judgment-debtors keeps the decree in

force against all simultaneously. The Court, however, reverted to the view indicated in the earlier case in Khema Debea v. Kumolakunt Bakshi 10

B.L.R. 259n : W.R. 10. The result was that when the question arose again in the case of Wise v. Rajnarain Chukerburty 19 W.R. 30 : 10 B.L.R.

258 (F.B.), the matter was referred for decision to a Full Bench. The question turned upon the true construction of Section 20 of Act XIV of 1859

which was then in force, and was in these terms: No process of execution shall issue from any Court not established by Royal Charter to enforce

any judgment, decree or order of such Court, unless some proceeding shall have been taken to enforce such judgment, decree or order, or to

keep the same in force within three years next preceding the application for such execution."" With reference to this provision, it was argued that

when the decree granted to the plaintiff separate reliefs against separate defendants, if proceedings had been taken to enforce the decree against

one judgment-debtor, the requirements of Section 20 were sufficiently fulfilled and that the effect was to keep alive the decree as against the other

judgment-debtors. The substance of the contention was that the term decree should be liberally construed, and as there could be only one decree

in a suit, Section 20 should be so interpreted as to cover cases as well of joint decrees as of several decrees disguised under one decree. This

contention was overruled by the Fall Bench. Couch, C.J., observed with reference to the decree before him that although the decree was made in

one suit, it was in reality and substance a separate decree against each for the portion for which each was declared to be liable. See also

Chowdhary Hureehur Singh v. Baboo Hridoy Narain 25 W.R. 310. The principle which underlies the decision of the Full Bench has now met with

legislative approval and is embodied in explanation 19 W.R. 30 : 10 B.L.R. to Article 179 of the Indian Limitation Act, 1908, which is in terms

identical with explanation (1) to Article 179 of the Indian Limitation Act, 1877. On behalf of the decree-holders, however, endeavour has been

made to draw a distinction between decrees made against different defendants and decrees made against the same defendants in respect of

different properties. In our opinion there is in principle no distinction between the two classes of cases. In the case before us, the defendants held,

from the plaintiffs as their landlords, distinct tenancies under Separate contracts. The obligations for the enforcement whereof the suit was brought,

were distinct and arose from different contracts. The decree recognised this and entitles the plaintiffs to bring to sale distinct tenancies for the

realisation of the arrears livable respectively there from. The position is precisely the same as if the plaintiffs had brought the distinct suits for rent

against the defendants, one in respect of each tenancy. If they had instituted such suits, there would have been on three different sheets of paper the

very decrees which we now find set out on one sheet of paper. If three suits were so brought, it is plain that the rule of limitation would have been

applicable to each decree separately; and it could not have been urged for a moment that because the plaintiffs had taken out execution in respect

of one decree for rent against the defendants, they were protected from the bar of limitation in respect of the other decrees. We are of opinion that

although there was in the present case only one suit, yet, at the instance of the plaintiff, three distinct decrees have been made for their benefit to

enable them to proceed with execution under the provisions of the Bengal Tenancy Act with all the consequences which result there from, namely,

to sell the tenures free of incumbrances imposed thereupon by the tenants. The plaintiffs sought this advantage and were awarded relief

accordingly. If they now find themselves at a disadvantage from a different point of view which they had not possibly realised at the time, the

difficulty is entirely of their own creation. There is, in our opinion, no escape from the position that the present application for execution is barred

by limitation with regard to the sums claimed from the first two tenancies; but in respect of the sum due from the third tenancy, the application is in

time, because made within three years from the date of the first application.

3. The result is that this appeal is allowed in part. The application for execution will stand dismissed in respect of the sums due from the first two

tenancies stated in the seventh column. The execution, however, will proceed in respect of the sum decreed with regard to the third tenure with

interest thereon. The appellants are entitled to their costs in this Court. We assess the hearing-fee at two gold mohurs.