SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sheikh Hafeez UddIn Vs. Ram Chander Das

Sheikh Hafeez UddIn Vs. Ram Chander Das

SooperKanoon Citation : sooperkanoon.com/449284

Court : Allahabad

Decided On : Jan-13-1937

Reported in : AIR1937All397

Appellant : Sheikh Hafeez Uddin

Respondent : Ram Chander Das

Judgement :

Niamatullah, J.

1. This is a decree-holder's appeal from an order passed by the Subordinate Judge of Muzaffarnagar in appeal from the order passed by the Munsif of that district dismissing the appellant's application for execution as time-barred. The appellant had sued for recovery of Rs. 615 in a Court situated in Delhi, impleading three defendants, namely, (1) Firm Ram Chand Atma Ram (2) Atma Ram, minor, under the guardinship of his father, and (3) Rahtu Mai. The suit was dismissed against Atma Ram but was decreed against the other two defendants. The decree-holder applied, on 15th February 1930, for transfer of the decree to Muzaffarnagar. A certificate was granted on 1st March 1930. No further action was taken by him on that certificate but on 28th February 1933, he again applied to the Court passing the decree for a certificate of transfer of his decree. The certificate was granted on 9th May 1933. This was followed by an application, dated 23rd February 1934, made in the Court at Muzaffarnagar for execution of the decree.

Ram Chander objected on the ground of limitation. The Munsif upheld the plea of limitation. The decree-holder's appeal to the learned Subordinate Judge of Muzaffarnagar was unsuccessful. The decree-holder has come to this Court in second appeal.

2. It is not disputed that if the various applications made by the decree-holder be taken to be in accordance with law, his application dated 23rd February 1934 was within time. The lower Courts have, however, held that the application for transfer, made on 28th February 1933, was not according to law and for that reason, the application for execution, dated 23rd February 1934, being more than three years from the first application for transfer (dated 15th February 1930) is barred by limitation. The decree-Holder is unable to rely upon any other application as one for a step-in-aid of execution. The reason why the application, dated 28th February 1933, is said to be not in accordance with law is that the names of the judgment-debtors were wrongly stated in the application. Section 39, Civil P.C., is the only relevant section to determine whether the application was according to law or not. That section provides that if one of certain conditions exists:

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court....

3. Sub-section (2) empowers the Court which passed a decree to send it for execution of its own motion to any Subordinate Court of competent jurisdiction. Unlike an application for execution of decree, which, under Order 21, Rule 11, must state certain particulars, an application under Section 39, Civil P.C., is not required by law to be in any particular form. All that the section requires is that an application should be made to the Court passing the decree to transfer it. In my opinion, if the application gives sufficient particulars of the decree sought to be transferred to indicate with precision the decree which the Court is to transfer, the application cannot be considered to be otherwise than one according to law. In many cases it may be enough for the application to give the number of the suit in which the decree was passed, provided the Court does not require further particulars to be given in order to trace the decree. In the present case the application was drawn up in a form prescribed by Order 21, Rule 11, Civil P.C., for

applications for execution of decrees. In Col. 1 the number of suit is correctly stated. In Col. 2, headed 'names of parties', the' name of the plaintiff is also correctly stated. The name of defendant 1 is mentioned as 'Firm Atma Ram,' and another defendant mentioned in that column is Atma Ram, minor, under the guardianship of Ram Chander. This is also correct. Rahtu Mal's name is also mentioned in the array of the defendants. This again is correct. In Col. 9 which is headed 'Against whom execution is sought', it is stated 'Judgment-debtors'. In the last column is the prayer 'A certificate of transfer to District Muzaffarnagar be granted'. There is no doubt that there is a clerical error in the name of the firm, which should have been described as 'Ram Chand Atma Ram' instead of 'Firm Atma Ram'. The Court had no difficulty in tracing the decree sought to be transferred and granted the certificate. In my opinion, a clerical error of this kind is not such a flaw as to make the application one not according to law.

4. The lower appellate Court was influenced not only by the error already-referred to but also by certain errors which crept in the application for execution subsequently made at Muzaffarnagar. The name of the judgment-debtor against whom execution was originally applied for was stated to be Atma Ram. The application was subsequently amended and the name of the firm Ram Chand Atma Ram was entered. The learned Judge has held that in the application for transfer the decree-holder should be taken to have stated that execution was sought against Atma Ram, who, it is pointed out, had been exempted from the decree. Referring to the application for transfer, I find that it is expressly stated that execution is sought against 'judgment-debtor'. Atma Ram's name in that connexion is not at all mentioned. The main ground, therefore, on which the conclusion of the lower appellate Court rests, is utterly untenable. The lower appellate Court has relied on Jnanendra Nath v. Nihalo Bibi (1910) 32 All 404. It was held in that case that an application for execution against persons who were not the legal representatives of the deceased judgment, debtor was not in accordance with law. As I have already pointed out, Order 21, Rule 11, Civil P.C., prescribes a particular form for an application for execution of decree and requires specified particulars to be mentioned in that application. An application for transfer under Section 39 need not be in any particular form and is not required to give the same particulars. It has not been disputed that an application for transfer of decree is an application for a

step-in-aid of execution, within the meaning of Article 182(5), Lim. Act. The result is that this appeal is allowed with costs, the orders passed by the lower Courts are set aside and the case is sent back to the Court of first instance with the direction that the decree be executed according to law. (Leave to appeal under the Letters Patent is refused).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com