

Pitam Singh Vs. Tota Singh and ors.

Pitam Singh Vs. Tota Singh and ors.

SooperKanoon Citation : sooperkanoon.com/452303

Court : Allahabad

Decided On : Jan-22-1907

Reported in : (1907)ILR29All301

Judge : George Knox and ;Richards, JJ.

Appellant : Pitam Singh

Respondent : Tota Singh and ors.

Judgement :

Knox and Richards, JJ.

1. This second appeal arises out of execution proceedings taken by the appellant, who is the transferee of Musammat Gomti, the original decree-holder. The decree was transferred to Pitam Singh on the 12th of January 1901, and on the 19th of March 1902, Pitam Singh, admittedly within time, applied to the Court) executing the decree that his name might be substituted for the name of Musammat Gomti. Notice in writing of this application was by the Court's order sent to the various judgment-debtors. One of them, Pulandar Singh, could not be found, and on the 31st of May 1902 Pitam Singh applied to the Court for further time, stating that he could not find the address of Pulandar Singh. The decree will be barred unless it be held that both these applications are steps in aid of execution within the meaning of Clause (4) of Article 179 of the second schedule of the Indian Limitation Act, 1877. The respondent contends that inasmuch as the application of

the 19th of March 1902 merely asked for substitution of names and did not contain any prayer for execution, the application is not one in accordance with law to the proper Court to take some step in aid of execution of decree. The application of the 19th of March 1902 was evidently intended by Pitam Singh as a necessary preliminary to further proceedings in execution. The Court dealt with it as such. The application of the 31st of May was also necessary to carry into effect the order of the Court passed on the application of the 19th of March. 'We have no doubt that both the applications were bond fide, and the delay that has since taken place is explained by a suit which was instituted to set aside the transfer by Musammat Gomti in favour of Pitam Singh. The only question we have to decide is whether these applications come within the language used in Clause (4) of Article 179.' We decide this question in the affirmative. They were bond fide applications made with the intention of keeping the decree alive, and the decree could not be executed until notice of the application under Section 232 had been given to the transferor and the judgment-debtors, and their objections heard. There has certainly been considerable delay and this affects our order regarding costs. We decree the appeal, set aside the decrees of both the Courts below and return the proceedings through the lower appellate Court to the Court of first instance with directions that that Court place the proceedings upon the file of pending proceedings and proceed according to law. We make no order as to costs.