

Babu Nandan Vs. Mst. Sumitra

Babu Nandan Vs. Mst. Sumitra

SooperKanoon Citation : sooperkanoon.com/454353

Court : Allahabad

Decided On : Apr-05-1960

Reported in : AIR1961All287

Judge : S.N. Sahai, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 and 47; [Constitution of India](#) - Article 141

Appeal No. : Second Appeal No. 4471 of 1958

Appellant : Babu Nandan

Respondent : Mst. Sumitra

Advocate for Def. : J.N. Misra, Adv.

Advocate for Pet/Ap. : Behariji Dass, Adv.

Disposition : Appeal allowed

Judgement :

S.N. Sahai, J.

1. This is a judgment-debtor's second appeal and arises in the following circumstances:

Smt. Sumitra, the decree-holder respondent filed a suit in the court of Munsif for recovery of possession against the appellant treating him as an Asami. That suit was ultimately decreed after contest. The decree-holder Smt, Sumitra made an application for execution of the decree for possession in the court of Munsif, Jaunpur.

The judgment-debtor appellant objected to the execution of the decree on the ground that the decree sought to be executed was a nullity as it was passed by a court which had no jurisdiction to do so. The contention was that the suit was one under Section 202 of the U. P. Zamindari Abolition and Land Reforms Act, which was exclusively cognizable by a revenue court and the civil court had no jurisdiction to entertain it, and in entertaining it and passing a decree on the basis of it the civil court has acted wholly without jurisdiction.

2. The court executing the decree upheld the objection and dismissed the application for execution. The lower appellate court has reversed that decree and held that the execution court could not go into the question of the validity of the decree and was bound to execute it as it stood. Aggrieved with the decree of the lower appellate court the judgment-debtor has come up in second appeal to this Court.

3. It has been strenuously urged before me that the lower appellate court in coming to the conclusion that even if it is apparent on the face of the record that the decree sought to be executed was a nullity, the court executing it had to give-effect to it, has erred in law.

4. It is true that the judgment-debtor appellant had not taken a plea in defence in the original suit that it was not legally maintainable in the civil court but that will not be a bar to his raising the plea of the invalidity of the decree on the ground of want of jurisdiction in the execution proceedings. The lower appellate court relied upon the Full Bench decision of this Court reported in *Cantonment Board v. Kishen Lal* : AIR1934 All609 and held that it was not open to the judgment-debtor to raise a plea of the invalidity of the decree in execution proceedings. It was held by the learned Judges constituting the Full Bench that it was not open to the-defendant in a suit which under the Agra Tenancy Act was cognizable by the revenue court

alone and in which no such objection was taken or, if taken, was disallowed, to raise the same point over again in the execution proceedings. But they also observed that:

'It is not possible to lay down, broadly that an executing court can in no circumstance go behind the decree and must necessarily shut its eyes to the circumstances in which the decree was passed.....'

'There may accordingly be cases where the decree is incapable of execution or is void and a nullity in such a way as to make it impossible for the executing court to execute it.'

5. The same view was taken in the case of Mahabir Singh v. Narain Tewari, reported in : AIR1931 All490 . It was observed in this case that:

'The court would certainly have power to refuse to execute a decree of this kind when it is a nullity or has been passed without jurisdiction.....'

'Nor does it follow that if the attention of the court is drawn to the fact that the decree is a nullity it must blindly proceed to execute it regardless of the utter absence of its jurisdiction. But if it is patent and apparent on the record, then even if there were estoppel against a party, a court would not be estopped from considering the point. Indeed, if it involves a question of jurisdiction it would be the duty of the Court to take it into account. The principle of estoppel cannot be allowed to defeat the provisions of a statutory enactment which affects the jurisdiction of a court, as a party cannot by its admission or previous conduct confer jurisdiction on a court where none exists.'

6. Whatever the law might have been regarding the powers of executing court to consider the question of the invalidity of the decree in those proceedings the entire controversy has now been set at rest by the decision of the Supreme Court where it has been expressly laid down that the question regarding the validity of the decree can be considered even at the stage of execution. The Supreme Court in the case of Kiran Singh v. Chaman Paswan : [1955]1SCR117 , hold that:

'It is a fundamental principle that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.'

7. Learned counsel for the respondent has urged before me that the observations quoted above were only obiter, as the question for consideration before the Supreme Court in that case was 'what was the effect of Section 11 of the Suits Valuation Act' and they were not considering whether the question regarding the invalidity of the decree could be raised in execution proceedings.

8. It is true that it was obiter but even an obiter of the Supreme Court is binding upon the courts in India. I am fortified in my opinion by the two decisions of this Court reported in : AIR1953 All613 , Simla Devi v. Chaturvedi and : AIR1955 All543 , Ram Surat Singh v. Ram Murat Singh, in which it was held that even an obiter of the Supreme Court is binding on the courts of India. In my opinion the present objection was legally maintainable and the view taken by the lower appellate court that it could not be maintained was erroneous.

9. The lower appellate court rejected the objection on another ground also i.e., that the error of jurisdiction was not apparent on the face of record. In my opinion the view taken by it was wholly wrong. I have gone through the plaint of the suit in which this decree was passed and even a cursory glance of it shows that the suit was one under Section 202 U. P. Zamindari Abolition and Land Reforms Act, though the section was not mentioned expressly in the plaint. In my opinion, the view taken on both the points by the trial court was correct and the lower appellate court in reversing it erred in law.

10. I accordingly allow this appeal with costs, set aside the decree passed by the lower appellate court and restore that of the court of first instance.