

indarjit Vs. Sheikh Arshad Ali

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Court : Allahabad

Decided On : Dec-07-1909

Reported in : 4Ind.Cas.492

Judge : Tudball, J.

Appellant : indarjit

Respondent : Sheikh Arshad Ali

Judgement :

Tudball, J.

1. This appeal arises out of the execution of a decree obtained under Section 90 of the Transfer of Property Act. One Ram Saran mortgaged certain property to the respondent as security for a loan. The latter brought a suit for sale against him and the property was sold, but the sale proceeds were insufficient to satisfy the decree. Then Ram Saran died. The decree-holder then applied as against the appellant Indarjit for a decree under Section 90 of the Transfer of Property Act representing him to be the nephew and heir of the judgment-debtor and in possession of his property. No objection being taken, the decree was passed against Indarjit in his representative capacity, the amount being recoverable from the assets of the deceased which had come to his hands. This decree was put into execution and certain property in the hands of Indarjit was attached as being the assets of Ram Saran. Indarjit took objection, pleading (1) that though nephew by nature, he was

the adopted son of Ram Saran, (2) that the attached property was the property of the family (himself and Ram. Saran) which he had taken not as heir but as survivor and, therefore, it was not saleable in execution of the decree. The Munsif held that the objector had been adopted by Ram Saran and that the property was joint family property which had come to him by survivorship. Accordingly in accordance with the rulings of this Court, he decided that the objections were valid and that the decree-holder was bound to bring a fresh suit against the objector if he wished to follow the property in the hands of the son. The decree-holder appealed. While the appeal was pending, the new Code of Civil Procedure came into force, under Section 53 of which the creditor can in execution proceedings now follow the property in the hands of the son. and the question of the son's liability as a pious Hindu can be decided in those proceedings. The lower appellate Court in view thereof, without going into the question of adoption, decreed the appeal directing the Munsif to proceed according to the new law.

2. The judgment-debtor now appeals. The only point pressed is that Section 53 of the new Code of Civil Procedure cannot be applied as these proceedings commenced under the old Code. There is no force in this contention. The appellant has no vested interest in procedure. The present point is simply one of procedure, and the law of procedure having changed pendente lite, it must be followed. The parties, of course, will be allowed to raise questions which under the old Procedure Code could not be raised, but may be now raised, e.g., it will be open to the appellant to plead that the debt was an immoral one and not binding on him, a plea which he was unable to raise in execution proceeding under the law as it was understood in these provinces. None of the other grounds of appeal are pressed. The lower appellate Court very wisely directed each party to bear his own costs in that Court. The present appeal was unnecessary. I therefore dismiss it with costs in this Court to the respondent.