

Manmohan Das and ors. Vs. Rashiduddin and ors.

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Court : Allahabad

Decided On : May-25-1927

Reported in : AIR1927All698; 103Ind.Cas.244

Appellant : Manmohan Das and ors.

Respondent : Rashiduddin and ors.

Judgement :

Dalal, J.

1. It is to be regretted that the respondents are not represented here. Syed Majid Ali has argued the appeal very thoroughly and put before the Court all the law on the subject. This was not done before the executing Court and that is why its attention was not drawn to facts which would bring, the last application for execution of 17th December 1925, within time. The decree was originally passed on 13th April 1920 for money. There were two applications for execution: one of 20th May 1921 and the other of 18th May 1922. The judgment-debtor Mohammad Junaid died during the continuance of the second application, and on 6th January 1923 the decree-holder applied to have the names of Mohammad Junaid's heirs substituted. It was not known who the heirs of Mohammad Junaid were, but fortunately for the decree-holder one of the admitted heirs, Najmul Huda, desired to be made a party. That application of 6th January 1923 was a step-in-aid of execution because under the Civil Procedure Code there is no separate action

provided for bringing the heirs of a judgment-debtor on the record but under Order 21, Rule 22 the application has to be one for execution against the legal representatives of a deceased judgment-debtor. The application of 6th January 1923 must, therefore, be taken to be a step-in-aid of execution and the present application of 17th December 1925 having been filed within three years of that date was within time. The attention of the lower Court was drawn only to the application for execution against Sultan Alam of 2nd February 1925. He was alleged to be a son of Mohammad Junaid. This allegation, however, was not correct and so the application would not save time, as Sultan Alam was not a legal representative of Muhammad Junaid. This being granted, the lower Court held that the last application was that of 18th May 1922, that is of a date more than three years prior to the present application. In fact, however, there is an intermediate application of 6th January 1923 as described above, and that application will save limitation.

2. The question then arose whether, if limitation was saved against one of the legal representatives Mohammed Ishaq (son of Najmal Huda) it would be saved against all the legal representatives who are objectors to the application for execution. This point was decided as far back as 1881 by a Bench of this Court in the case of Ram Anuj Sewak Singh v. Hingu Lal [1881] 3 All. 517 which has been recently followed by the Patna High Court in Shib Dutta Singh v. Karim Bakhsh A.I.R. 1925 Pat. 551. It was decided in these Bench rulings that where a decree-holder applies within time for the substitution of such of the heirs of a deceased judgment-debtor as he believes to be in existence the applications for execution will take effect for the purposes of limitation against all the legal representatives. This being the case-law on the subject, the application for execution dated 17th December 1925 was within limitation with respect to all the persons against whom execution was sought. In the result I set aside the decree of the lower Court and remand the application for execution to it for action according to law. This order is passed ex parte under Order 41, Rule 23, Civil P.C. The appellants will receive ex-parte costs here.