

Data Din Vs. Nanku and ors.

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Court : Allahabad

Decided On : Jul-26-1918

Reported in : AIR1918All397; 47Ind.Cas.864

Judge : Henry Richards, C.J. and ;Tudball, J.

Appellant : Data Din

Respondent : Nanku and ors.

Judgement :

1. This appeal arises under the following circumstances. A suit was instituted against a father and son on the basis of a mortgage. A plea was put forward on behalf of the son that there was no family necessity. The result of the suit was that the Court gave a simple money decree against the father and held that the son was not liable, and in the decree stated that the son was 'exempted' and that he should get his costs from the plaintiff. We may pause here to say that we consider that this was exactly the same as if the Court had by the decree expressly dismissed the suit with costs as against the son. The plaintiff-decree-holder executed the decree against the father's estate. That having proved insufficient he sought to attach and sell the son's estate. The son objected in execution and his objection was allowed. Thereupon the plaintiff brought the present suit seeking a declaration that the son's property could be sold in execution of the decree on the principle of the pious obligation of a son to pay his father's debts. The learned Judge of this Court, on being informed that a difficult question of Hindu Law,

particularly having regard to certain remarks of their Lordships of the Privy Council in the recent case of Sahu Ram Chandra v. Bhup Singh 39 Ind Cas. 280 : 39 A. 437 : 15 A.L.J. 437 : 21 C.W.N. 698 : 1 P.L.W. 557 : 19 Bom. L.R. 498 : 26 C.L.J. 1 : 33 M.L.J. 14 : (1917) M.W.N. 439 : 22 M.L.T. 22 : 6 L.W. 213 : 44 I.A. 126 (P.C.) arose, referred the appeal for the decision of two Judges.

2. On behalf of the respondent it has been pointed out that this question of law really does not arise because the allowing of the son's objection in execution was final and the present suit cannot be brought. Under Section 47 all matters relating to the execution and discharge of the decree arising between parties to the suit must be disposed of in execution and not by a separate suit. There had been some conflict of authority previous to the passing of the Code of Civil Procedure of 1908. This Court had held that the parties must not only be parties to the suit but they must be parties to the decree. Any conflict of authority has been set at rest by the explanation which has been added to Section 47, namely 'for the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.' It was contended on behalf of the appellant that this explanation does not apply where a defendant has been merely exempted.' We think there is no force whatever in this contention. The expression in the decree exempting a particular defendant was probably an inaccurate expression, but the operation of the decree was to dismiss the suit as against that particular defendant. We dismiss the appeal with costs.

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