Ramji and anr. Vs. Ramji

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SooperKanoon Citation : sooperkanoon.com/478969

Court : Allahabad

Decided On : Mar-20-1933

Reported in : AIR1933All844

Appellant : Ramji and anr.

Respondent : Ramji

Judgement :

Niamutullah, J.

1. This is an appeal from an order passed by the learned Subordinate Judge, Allahabad, dismissing the appellants' application for execution of decree as barred by limitation. The appellant obtained on 31st March 1927 a simple money decree for Rs. 6,595-11-3 in suit No. 116 of 1926, of the Court of the Subordinate Judge, Benares. The application which has been dismissed by the lower Court was made on 7th November 1930 after a certificate of transfer had been obtained from the Court passing the decree. The application for certificate of transfer was made on 12th August 1930. If no subsequent application had been made for execution or some step-in-aid of execution being taken, there could be no doubt that his application dated 7th November 1930,, was barred by limitation being more than three years from the date of the Ramji. This appeal was heard by a. Bench of this Court, of which one of us was a member on 14th December 1932 It was represented that an application made by the decree-holder on. 19th March 1928

saved limitation, and that the learned Subordinate Judge did not take it into account As the record containing the application of 19th March was not before the Court the-case was adjourned and the record sent for That application together with incidental proceedings is now before us.

2. It is not disputed by the learned Counsel for the respondent that if the application dated 19th March 1928, saves limitation, the appellants' application of 7th November 1930, was within time It is however argued that the application of 19th March 1928, was not an application for execution or a step-in-add of execution in accordance with law. The application was drawn upon a tabular form following the requirements laid down by Order 21, Rule 11, Civil P.C. In the last column in Which the applicant is required to state the manner in which the aid of the Court was sought if was mentioned originally that

certificate be sent to the District Judge of Allababad and the certificate be handed over to the applicant.

3. On the same day, that is, 19th March 1928, another application purporting to be one for the amendment of the application already made was presented. It was proved in this application that the word 'certificate' mentioned in Col 11 be deleted and the word 'precept' be substituted therefor. It was stated in the application for amendment that a certain sum of money belonging to the judgment-debtor was held by the Improvement Trust, Allahabad, and that there was a likelihood of the judgment-debtor withdrawing the money before the decree-holder could have it seized for the satisfaction of his decree Accordingly it was prayed that mention may be made in the original' application that the money standing in the Improvement Trust, Allahabad, to the credit of the judgment-debtor be attached to the extent of the decretal amount. The original application was amended. The word 'precept' was added in English. The words' Improvement Trust, Allahabad' have also been added in English. The rest of the contents of that column remained as before. They run as follows:

Certificate precept adalat jaji Allahabad men bheji jawa wa certificate dasti ata farmai jawe.

4. These words are written in Urdu in two lines between which the words 'Improvement Trust, Allahabad' are written in English. Reading the amended application with the application for amendment the only rational interpretation which we can place upon it is that the decree-holder prayed that a precept be issued to the District Judge of Allahabad for attachment of money standing to the credit of the judgment-debtor in the Improvement Trust, Allahabad. Such a prayer is perfectly in consonance with the provisions of law. Under Section 46, Civil P.C., it is open to the Court passing a decree to send a precept to another Court which is competent to execute such a decree to attach any property belonging to the judgment-debtor and specified in the precept. The learned Subordinate Judge, if he had acted strictly in accordance with law, should have drawn up a precept calling upon the district Judge of Allahabad who was undoubtedly competent to execute the decree in question to attach the money standing to the credit of the judgment-debtor Sn the office of the Improvement Trust, Allahabad. Instead of taking such action which would have been in, order, the learned Subordinate Judge passed an order which can be construed as one under Order 21, Rule 131, which relates to garnishee orders or as an order of attachment. Obviously the learned Subordinate Judge was under a mis-apprehension as regards his powers under Section 46. Civil P.C. Where a precept is applied for under that section all that the Court passing the decree can do is to issue a precept to another Court specifying the property which the latter is required to attach. It is not open to the Court issuing the precept to attach such property itself. The Court to which it is issued must attach the property and wait for an application for execution being made by the attaching creditor. Such attachment, as the section makes it perfectly clear, subsists for two months and no longer, unless it is extended by another order of the Court issuing the precept. The attaching Court is the Court to which the precept is issued and not the Court which issues the precept. But we are not concerned with the regularity or otherwise of the order passed by the learned Subordinate Judge. What we are called upon to decide is whether the appellants' application of 19th March 1928, was in accordance with law. If as we have already stated, the application read with the subsequent application for amendment amounts to a prayer that a precept be issued to the District Judge of Allahabad to attach the money held by the Improvement Trust, Allahabad, to the credit of the

judgment-debtor, there can be no doubt that the application was in accordance with law. The only criticism that can be levelled against the application is that the last column is very clumsily worded. The intention of the appellant however in making the prayer to which reference has already been made is perfectly clear. Accordingly we hold, that the application of 19th March 1928-was at least an application for a step-in-aid of execution being taken. It therefore saves limitation. The application of 7th November, 1930, was in that view in time.

5. This appeal is accordingly allowed with costs. The case is sent back to the lower Court for proceeding with execution as prayed by the appellant.