

Laxmi Narain and ors. Vs. Firm Ram Kumar Suraj Bux and ors.

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Court : Rajasthan

Decided On : Jul-22-1970

Reported in : AIR1971Raj30; 1970(3)WLN372

Judge : Jagat Narayan, C.J. and; R.D. Gattani, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 38, 39, 73 and 63 - Order 21, Rule 52

Appeal No. : First Appeal Nos. 73, 91 and 101 of 1962

Appellant : Laxmi Narain and ors.

Respondent : Firm Ram Kumar Suraj Bux and ors.

Advocate for Def. : M.C. Bhandari, Adv. for; Bhanwarani, Adv.,; Nihal Kumari

Advocate for Pet/Ap. : C.L. Agarwal and; R.S. Kejriwal, Advs.

Judgement :

Jagat Narayan, C.J.

1. These three appeals arise out of a suit filed under Section 73(2), Civil P. C. by firm Ram Kumar Suraj Bux, against Laxmi Narain,, Smt. Surya Kumari and the legal representatives of Samar Singh which was decreed in part by the Senior Civil Judge No. 1, Jaipur City.

2. The plaintiff firm Ram Kumar Suraj Bux as well as Samar Singh, Smt. Surya Kumari and Laxmi Narain, defendants obtained decrees against one Shiv Behari Tewari from different courts and put them into execution. The amounts of the decrees at the time of execution were as follows:--

Court

Amount of decree

1.

Plaintiff

Senior Civil Judge, Jaipur

1,68,033.00

2.

Samar Singh

District Judge, Bhilwara

38,667.62

3.

Laxmi Narain

Senior Civil Judge, Jaipur

1,79,009.00

4.

Smt. Surya Kumari

Civil Judge, Shahpura (Bhilwara)

8,520.00

3. Shiv Behari Tewari worked as a contractor in the Irrigation Department. Payment of Rs. 57,509/- was to be made to him by the Executive Engineer (Irrigation), Kankroli. Kankroli is situated within the jurisdiction of District Judge, Udaipur. This payment was 'sanctioned by the Chief Engineer on 26th March, 1958. The decree-holders got prohibitory orders served on the Executive Engineer Kankroli in respect of this payment under Order 21, Rule 52, Civil P. C, as mentioned below:--

Decree-holder

Courtserving the order

Amount ordered

Date ofservice

Smt. Surya Kumari

Civil Judge, Shahpura

8,508-11-0

15-1057

Samar Singh

District Judge, Bhilwara

10,000/-

25-10-57

15000/-

10-12-57

Laxmi Narain

Senior Civil Judge, Udaipur

84,000/-

14-3-58

Bam Kumar Suraj Bux

Senior Civil Judge, Jaipur

63,800/-

31-3-58

4. Laxmi Narain got his execution transferred to the Court of Senior Civil Judge, Udaipur, and the latter court served the prohibitory order. Smt. Surya Kumari, Samar Singh and firm Ram Kumar Suraj Bux did not get their decrees transferred for execution to Udaipur Judgeship, but got the prohibitory orders served on the Executive Engineer Kankroli by the courts which passed the decrees, and in which their execution applications were pending.

5. The Executive Engineer Kankroli sent similar letters (Ex. 18) to the District Judge, Bhilwara, Civil Judge, Shahpura, the Senior Civil Judge, Jaipur and the Senior Civil Judge, Udaipur on 8-4-1958 intimating to them that a sum of Rs. 57,509/- was payable to Shiv Behari Tewari, that prohibitory orders mentioned above were served on him by the above mentioned courts in respect of the amounts indicated in the above table and asking them how much money he should send to each of them. The District Judge, Bhilwara asked him to send Rs. 25,000/- to his court and the Executive Engineer complied with his order.

In the same way he sent Rs. 8520/- to the Court of Civil Judge Shahpura. The letter addressed to the Senior Civil Judge, Jaipur was not put up before him for orders along with the file of the execution case and so no order was communicated by that court to the Executive Engineer. Consequently, no money was sent to the court of the Senior Civil Judge, Jaipur. The Senior Civil Judge, Udaipur, wrote to the Executive Engineer that he should send Rs. 25,000/- to the District Judge, Bhilwara and the balance to him. But the Executive Engineer sent

Rs. 8,520/- to the Senior Civil Judge, Shahpura and the balance remaining after remitting this amount was sent to the Senior Civil Judge. Udaipur. This amount was Rs. 23,989/-.

6. Laxmi Narain got his execution transferred to the court of Civil Judge, Shahpura, on learning that a sum of Rs. 8,520/- had been sent to that court by the Executive Engineer, Kankroli, This amount was rateably distributed between Smt Surya Kumari and Laxmi Narain by that court, the former getting Rs. 392.02 and the latter getting Rs. 8127.98. The District Judge, Bhilwara, paid the whole of the amount of Rs. 25,000/- to Samar Singh. The Senior Civil Judge, Udaipur, gave the amount of Rs. 23,989/- to Laxmi Narain. The four decree-holders thus got the following amounts out of the sum of Rs. 57,509:--

Smt. Surya Kumari Rs. 392.02

Samar Singh Rs. 25,000.00

Laxmi Narain Rs. 32,116.98

Plaintiff Nil

The plaintiff then brought the present suit under Section 73(2), Civil P. C. on the allegation that he was entitled to rateable distribution out of the amounts sent by the Executive Engineer, Kankroli to the courts of District Judge, Bhilwara, Civil Judge, Shahpura (Bhilwara), and the Senior Civil Judge, Udaipur. The suit was brought against Laxmi Narain, defendant No. 1, the legal representatives of Samar Singh, deceased, defendants 2 to 6, and Smt. Surya Kumari.

The trial court found that Smt. Surya Kumari was entitled to receive Rupees 850.68 as her share on rateable distribution of the amounts received by the 3 courts and as she had received only Rs. 392.02, the suit was dismissed against her. The suit was decreed to the extent of Rs. 5,301.20 against Laxmi Narain, and to the extent of Rs. 19,211.00 against the legal representatives of Samar Singh, deceased with proportionate costs and pendente lite and future interest to the date of realisation at 6% per annum simple. Laxmi Narain has filed Civil First Appeal No. 73/1962, and defendants 2 to 6 have filed Civil First Appeal No. 91/62 against

this decree.

7. The plaintiff also claimed a sum of Rs. 4703.20 as interest at 6% per annum simple from the defendants on the sums to be recalled from them from the dates of payment of the excess amount to each of them till the date of the suit. This part of the claim was dismissed in toto by the trial court and the plaintiff has preferred Civil First Appeal No. 101/62 against that part of the decree.

8. Taking the appeals filed by the defendants first, the main contention on their behalf is that the prohibitory order in respect of the decree of the plaintiff which was served on the Executive Engineer, Kankroli, by the Senior Civil Judge, Jaipur City, was a nullity as the office of the Executive Engineer Kankroli was outside the territorial limits of his jurisdiction and the plaintiff did not get his decree transferred to any court in Udaipur Judgeship under whose territorial jurisdiction the office of the Executive Engineer is situated. It was argued that the plaintiff is accordingly not entitled to rateable distribution under Sections 63 and 73, Civil P. C.

9. In this connection reference was made to various provisions contained in the Code of Civil Procedure. So far as suits are concerned they can generally be filed in the court within the local limits of whose jurisdiction the defendant resides or works for gain or a part of the cause of action arises (Section 20). Section 16 lays down that suits for recovery of immovable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. Section 17 provides for the case when immovable property is situated within the jurisdiction of different courts and it has been laid down that the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situated. Section 21 lays down that no objection as to the place of suing shall be allowed by any appellate court or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

10. So far as execution proceedings are concerned separate provisions have been made in the Code which are contained in Part II---Sections 36 to 74--and in Order 21. Section 141 lays down that the procedure provided in the Code shall be

followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction. This section was held inapplicable to execution proceedings by the Privy Council in *Thakur Prasad v. Fakirulla*, (1895) ILR 17 All 106 (PC) and the Supreme Court has not taken a contrary view so far.

11. A Full Bench of the Calcutta High Court however held in *Prem Chand Dey v. Mokhoda Debi*, (1890) ILR 17 Cal 699 (FB) that the rule of territorial jurisdiction was equally applicable to execution proceedings. It was observed--

'By Section 16 of the Code of Civil Procedure, suits for the recovery of immovable property, or for the determination of any other right or interest in immovable property, must be instituted in the court within the local limits of whose jurisdiction the property is situate. This shows that the object of the Code is to limit the territorial jurisdiction of the Courts in regard to the property that they are entitled to deal with So far as the Procedure Code is concerned execution of a decree is only a continuation of the suit and there appears no legitimate reason why a Court in the later stage of a suit should have greater powers than it possessed at its institution. But however that may be, a comparison of Section 223 (Ss. 38 and 39 of the present Code) with the last paragraph of Section 649 (Section 37 of the present Code) seems to us to indicate that territorial jurisdiction is, a condition precedent to a Court executing a decree.'

12. Sections 37, 38 and 39 run as [follows:--

Section 37. Definition of Court which passed a decree. The expression 'Court' which passed a decree or, words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,--

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree,

would have jurisdiction to try such suit. Section 38. Court by which decree may be executed.-- A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Section 39. Transfer of decree.--(1) The Court which passed a decree may on the application of the decree-holder, send it for execution to another court,--

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has no property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other court. (2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

13. Our attention was also drawn to Rule 48 of Order 21 which provides for the attachment of salary of a public servant. The opening part of it runs as follows:--

'Where the property to be attached is the salary or allowances of a servant..... the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall be withheld from such salary.,.....'

and it was argued that the words 'whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's jurisdiction' would be unnecessary if the executing court could execute a decree against property lying outside its territorial limits.

14. A number of authorities were cited on behalf of the defendants including the decision of a Full Bench of the Madras High Court in *Vasireddi Srimanthu v. B. Venkatappayya*, AIR 1947 Mad 347. We are of the opinion that so far as this Court is concerned the matter is concluded by the decision of a Division Bench in *Tarachand v. Misrimal*, AIR 1970 Raj 53. The Madras Full Bench case was dissented from and it was held that Section 39 contains an enabling provision only and that the court which passed the decree has jurisdiction to execute it even outside the territorial limits of its ordinary civil jurisdiction. This decision is based on rulings of the Supreme Court referred to therein.

15. Apart from the above decision it was held by a Division Bench of the Allahabad High Court in *Bhagwati Prasad v. Jai Narain*, AIR 1958 All 425 that where the property is in the custody of a Court Officer, the Court which passed the decree, can, acting on its execution side directly attach such property under Order 21, Rule 52 even though it is outside its jurisdiction.

It may be mentioned that the Allahabad High Court is one of those Courts which has taken the view that as a general rule territorial jurisdiction is a condition precedent to a court executing a decree. It was pointed out in this decision that the general rule relating to the limitations over the powers of an executing court from the point of view of its territorial jurisdiction was subject to certain exceptions. Ordinarily when a court wants to attach some property it has to do something at the place where the property is. If some movable property is attached the process-server is required to go to the place where that property is and has to seize the same. Similarly in the case of attachment of immovable property also the process-server has to go to that property and make proclamation relating to attachment and has also to affix the order of attachment over the property.

When attachment is to be effected under the provisions of Order 21, Rule 52 the court has nothing to do beyond its territorial jurisdiction, although the public officer or the court having custody of the judgment-debtor's money is beyond the territorial jurisdiction of the executing court. All that the court has to do is to write a letter of request asking the public officer or the court concerned to hold the property subject to further orders from the attaching court. That letter of request

need not be sent through a messenger of the attaching court and can be sent through post. This decision was followed by the trial court and we agree with the reasoning given in it. One of us followed this decision earlier in *Gayoor Ahmad Khan v. Hazari Mal*, AIR 1965 Raj 41.

16. We accordingly hold that the first Contention put forward on behalf of the defendants before us has no force.

17. The second contention on behalf of the defendants is that the plaintiff is not entitled to any rateable distribution under Section 73 as he did not make any application either for execution or for rateable distribution in the 3 courts which received assets and distributed them before they were so distributed.

18. The relevant part of Section 73(i) runs as follows:--

'Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:'

19. We are of the opinion that Section 73(1) is in terms applicable only where property has been attached and sold or a prohibitory order has been served and assets received in the executing court at the instance of one decree-holder only and the other decree-holders merely apply for execution. Where more than one decree-holder get the same property attached or get a prohibitory order served on the same money belonging to the judgment-debtor held in the custody of public officer or court the provisions of Section 63 also become applicable. This section runs as follows:--

'Section 63(1). Where property not in the custody of any Court is, under attachment in execution of decrees of more courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose

decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.'

20. In the present case all the 4 decree-holders had applied for execution of their respective decrees and had got prohibitory orders served on the same sum of money belonging to the judgment-debtor held in the custody of the Executive Engineer, Kankroli. In this case Section 63 also becomes applicable and the provisions of Sections 63 and 73 have to be read together. We have held above that the prohibitory orders served under Order 21, Rule 52 C.P.C. by the courts of Senior Civil Judges Jaipur and Udaipur, the District Judge, Bhilwara and the Civil Judge, Shahpura, were all valid. Three out of these courts received the attached money. The only determination which they were called upon to make was as to what amount should be given by them to each of the 4 decree-holders.

21. Under Section 63(1) the District Judge of Bhilwara was the court of highest grade and he should have asked the Executive Engineer Kankroli to send the entire amount to his court and he should have passed an order as to how much amount was to be paid to each of the 4 decree-holders out of the sum of Rs. 57,509/-. He did not carry out the duty enjoined on him by law, although it was within his knowledge because of the letter (Ex. 18) addressed to him by the Executive Engineer, Kankroli, that all the 4 decree-holders were laying claim against the sum which was attached. The other courts also were fully in the know of the claims of all the decree-holders as similar letters were received by them from the Executive Engineer, Kankroli.

Section 63(1) however only names the forum for making the rateable distribution and Section 63(2) only validates the distribution made by a forum which is not in accordance with Section 63(1). The distribution has however to be made in accordance with Section 73(1) and if it is not made in accordance with it, it is invalid and is not validated by Section 63(2).

22. The consensus of judicial opinion is that where Section 63 is applicable it is not necessary for the decree-holder claiming rateable distribution to apply for

execution to the court holding the assets. It is sufficient if he has made an application for execution to the appropriate court, that is, to the court which passed the decree or if he gets his decree transferred for execution to another court, to the transferee court. , In this connection we may refer to the following decisions:--

Thanmull v. K. Krishnaswami, AIR 1935 Mad 988, Simla Banking & I. Co. Ltd. v. Indo. S. T. Co. Ltd., AIR 1938 Lah 754, Surendra Kumar v. Jamini Kumar, AIR 1936 Cal 723.

It will thus be seen that a decree-holder who had applied for execution of his decree before the receipt of assets by another court realised from property which he had attached is entitled to rateable distribution, whether the court which received the assets is of inferior grade or equal grade or of a superior grade than the court in which he has applied for execution. All that is necessary is that his application for execution must be of a date prior to the date of the receipt of assets.

In this case the assets were received by different courts after 8-4-58. All the decree-holders applied for execution to the appropriate courts before that date. All the 3 courts which had received assets had received letters similar to letter Ex. 18 prior to the distribution of the assets. All of them had knowledge of the claims of each of the 4 decree-holders. Under Section 63 read with Section 73 it was the duty of all these 3 courts to have distributed the monies received by them rateably amongst all the 4 decree-holders who had attached them.

The attention of all these courts was drawn after the distribution of the money by the plaintiff to the errors which they had committed. They had power to rectify their errors ex debito justitice by recalling the money paid by them in excess to some decree-holders and paying it to those who were entitled to it. As they failed to do so the plaintiff had to institute the present suit and the trial Court rightly ordered Laxmi Narain and the legal representatives of Samar Singh deceased who had taken money in excess of their shares to pay it to the plaintiff.

Our attention was not drawn to any direct reported case on the subject. We may however refer to the decision of the Madras High Court in Dandayutha Panj

Devasthanam v. Muthayanswami, AIR 1930 Mad 699 (2). In that case the inferior court paid out the amount in ignorance of the decree of the superior court. It was observed--

'The matter then resolves itself into the question, when is the conduct of the Court such, that it may itself take steps for rectification in the ends of justice. It is held in Madden v. Chappani, (1888) ILR 11 Mad 356 that it can take action when It has overlooked an attachment which is pending before it, and, in the unreported case, that it cannot take action when it has ignored an attachment in another Court which was never brought to its notice.'

23. In Madden's case, (1888) ILR 11 Mad 356 M and C each obtained a decree against the same judgment-debtor from the same court and applied for execution to it. C, in execution of his decree,' attached certain immovable property, and, with the permission of the Court, purchased the same under Section 294 (Order 21, Rule 72) and set off his purchase-money against the decree. M claimed that the proceeds of the sale to C should be rateably distributed under Section 295 (Section 73) and that C should either elect to have the property resold or pay into court the rateable proportion due to M. C objected to a resale or to pay. It was held by a Division Bench of the Madras High Court that C might be compelled to refund the rateable amount due to M by summary process in execution.

24. Applying the principles of the above two decisions the court can come the defendants in the present case to refund the rateable amount due to the plaintiff. In Madden's case, (1888) ILR 11 Mad 356 the court overlooked the attachment of the property in M's decree by it. In the present case also despite the letter from the Executive Engineer Kankroli, which contained the claims of the rival decree-holders, the three courts which received the money did not carry out their duty as enjoined under Sections 63 and 73. On the suit of the plaintiff the defendants can be compelled to refund the rateable amount due to the plaintiff.

25. On behalf of the defendants it was contended that as the plaintiff did not apply to the courts which received the monies he is not entitled to rateable distribution. This argument has no force in our opinion. Section 63 does not lay down that the decree-holder who wants his claim to be determined should personally appear

before the court receiving the assets to put forward his claim. No reported decision was cited before us laying down such a proposition. On the contrary Madden's case, (1888) ILR 11 Mad 356 is an authority for the proposition that it is not necessary for the decree-holder to appear personally before the court for receiving the assets and to draw its attention to the fact that he is entitled to rateable distribution.

26. We accordingly hold that the decrees passed against Laxmi Narain and the legal representatives of Samar Singh are correct and dismiss Civil Regular First Appeals Nos. 73/1962 and 91/1962 with costs.

27. Coming now to the appeal filed by the plaintiff it has been proved that the plaintiff served notice (Ex. 22) on Laxmi Narain on 21-9-61 asking him to pay him his rateable share out of the sum of Rs. 23,989/-, which he had withdrawn from the court of Senior Civil Judge, Udaipur together with interest at 6% per annum simple from 29-4-1958. Ex. 21 is the acknowledgment receipt of this notice which shows that it was received by Laxmi Narain on 18-10-58. Laxmi Narain admitted having received this notice in his statement in court. The plaintiff is thus entitled to get interest at 6% per annum simple from Laxmi Narain with effect from 18-10-58 to the date of the institution of the suit in addition to the sum which has already been decreed in his favour. The total amount 'found due against Laxmi Narain is Rs. 5301.20. The rateable share of the plaintiff in the sum of Rs. 23,989/- comes to over Rs. 10,000/-. As the plaintiff cannot get interest from Laxmi Narain on any sum more than Rs. 5301.20 he is entitled to get interest on Rs. 5301.20 at 6% per annum simple from 18-10-58 to the date of the institution of the suit.

28. The notices alleged to have been served on Samar Singh or his legal representatives have not been produced by the plaintiff and he is accordingly not entitled to recover any interest on the decretal amount before the institution of the suit from them. D. B. Civil Regular First Appeal No. 101/1962 is accordingly allowed in part and a sum of Rs. 795/- is decreed in favour of the plaintiff as interest against Laxmi Narain in addition to the sum already decreed against him by the trial Court..

29. Having regard to the partial success of the plaintiff in this appeal we leave the parties to bear their own costs of it.

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