

Salimaddln and ors. Vs. Daliluddln and ors.

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Court : Kolkata

Decided On : Apr-16-1946

Reported in : AIR1947Cal131

Appellant : Salimaddln and ors.

Respondent : Daliluddln and ors.

Judgement :

ORDER

B.K. Mukherjea, J.

1. The predecessors of opposite parties 1 to 9 in this rule obtained a decree against the petitioners in the Union Court of Talma in the district of Faridpur for a sum of Rs. 42 only. The Union Court being unable to effect satisfaction of the decree granted a certificate to the decree-holder under Section 91(1), Village Self-Government Act, and the decree-holders thereupon presented an application for execution of the decree in the Court of the Sadar Munsiff of Faridpur on 2-5-1942. On 18-11-1942, certain properties belonging to the judgment-debtors were put up to sale and purchased by the decree-holders themselves. This sale was confirmed on 6-1-1943. On 24-1-1943, the judgment-debtors started a proceeding for setting aside the sale under Order XXI, Rule 90, Civil P.C. and it was registered as Misc. case 130 of 1943. Though the application was headed under Order XXI, Rule 90, Civil P.C. one of the grounds put forward by the judgment-debtors in impeaching

the validity of the sale was that the Court of the Sadar Munsiff at Faridpur had no jurisdiction to entertain the application for execution of the decree of the Union Court and the sale held by that Court was null and void. The Munsiff who heard the application gave effect to the contention and held that the only Court which could execute the decree was the Court of the Munsiff at Bhanga. The result was that the sale was set aside and the application for execution was returned to the decree-holders to be presented to the proper Court. On appeal, the judgment of the Munsiff was set aside, and the learned Subordinate Judge who heard the appeal came to the conclusion that the Sadar Munsiff of Faridpur was competent to entertain the application for execution and to put up the properties to sale. The lower appellate Court sent the case back to the Sadar Munsiff of Faridpur in order that the application under Order 21, Rule 90, Civil P.C., might be heard and disposed of on its merits. It is against this order that the present rule has been obtained.

2. Mr. Sen Gupta appearing in support of the rule contended before me that under Section 91(2), Village Self-Government Act, the Court of the Sadar Munsiff at Faridpur was not competent to execute the decree of the Union Court, and consequently the decision of the trial Court was right and the sale should be set aside as null and void for want of jurisdiction. Now Sub-section (1) of Section 91, Village Self-Government Act, (1 [I] of 1899) provides that

If the Union Court granting a decree is unable to effect satisfaction thereof, it shall grant the decree-holder a certificate to that effect stating the amount Court due on account of fees under Section 90.

Sub-section (2) then lays down that

Any decree-holder wishing to execute a decree of a Union Court may apply to the Court of the Munsiff within the local limits of whose jurisdiction the Union is situated....

3. It is not disputed that police station Nagarkanda within which the Union Court of Talma is situated is assigned to the Court of the Munsiff of Bhanga under Section 13, Bengal, Agra and Assam Civil Courts Act (12 [XII] of 1887). The learned

Subordinate Judge, however, points out that although that Union is situated within the local limits of the jurisdiction of the Munsiff's Court at Bhanga the Sadar Munsiff was also competent to entertain the application for execution of the decree and put up the property to sale. It is said that by a notification under Section 19(2), Bengal, Agra and Assam Civil Courts Act, Babu Prasad Chandra Banerji, who was the Sadar Munsiff at Faridpur at the time when the application for execution was filed was invested with powers to try suits up to the value of Rs. 2000 arising within the entire district of Faridpur. His successor, Mr. Ali, who ordered the property to be sold had also similar jurisdiction conferred upon him. It was held in these circumstances that even though it might be irregular to file the application for execution in the Court of the Sadar Munsiff at Faridpur, that Court being presided over by the officers mentioned above was not incompetent to execute the decree.

4. It seemed to me at first sight that this reasoning was sound, but a plain reading of Section 91(2), Village Self-Government Act, convinces me that the Legislature in enacting that provision had in mind a particular Court of Munsiff, within the local limits of whose jurisdiction the Union Court is situated as contemplated by Section 13, Bengal, Agra and Assam Civil Courts Act. The local limits of a Court's jurisdiction are fixed and determined under Section 13, Bengal, Agra and Assam Civil Courts Act, and it is not disputed that in the present case, the area within which the Talma Union Court is situated is within the jurisdiction of the Court of the Munsiff at Bhanga. Section 19(2), Bengal, Agra and Assam Civil Courts Act, in my opinion, does not fix the local limits of a particular Court. It confers additional powers upon particular Munsiffs by which their jurisdiction is extended. These additional powers do not vest in the Court but vest in the officer concerned, and so long as that officer is attached to and presides over a particular Court, the latter can certainly entertain suits or proceedings which are ordinarily outside its jurisdiction; but Section 91(2), Village Self-Government Act, in my opinion, has not in view the provision of Section 19(2), Bengal, Agra and Assam Civil Courts Act, but that of Section 13 of the Act by which the local limits of jurisdiction of a particular Court are fixed and determined. In my opinion, therefore, the view taken by the trial Court is right and the judgment of the lower appellate Court should be set aside. The result, therefore, is that this rule is made absolute. The order of the lower appellate Court is set aside and that of the trial Court restored and affirmed.

I make no order as to costs in this Court.

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