

Krishna Chandra Vs. Radha Kanta Saha Choudhury and ors.

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Court : Kolkata

Decided On : Nov-19-1946

Reported in : AIR1948Cal111

Appellant : Krishna Chandra

Respondent : Radha Kanta Saha Choudhury and ors.

Judgement :

Clough, J.

1. The appellant, Krishna Chandra Dutta Chowdhury filed a Suit No. 888 of 1929 in the Munsif's Court at Bogra for rent; the suit was contested but the appellant obtained a decree. Some of the lands in respect of which the rent suit was brought was in the district of Bogra and was darpatni; the remainder was a patni situated in Serajganj in the district of Pabna. In due course, the appellant put the lands at Bogra to sale in execution of his decree: that was in Exccution Case No. 959 of 1937. The sale proceeds were not sufficient to satisfy the decree in full and thereafter the decree was transferred for execution to the Munsif's Court at Serajganj. To that execution objection was taken by the respondents judgment-debtors on two grounds namely, (a) that the decree was a nullity and void inasmuch as the Court of the Munsif at Bogra which had passed the decree had no jurisdiction to do so in respect of the rent due in respect of the land which was situated in the district of Pabna and (b) that the execution proceedings were not for

attachment and sale of the entire tenure or holding and in the circumstances Section 168A, Ben. Ten. Act, was a bar. On 3-7-1943, the District Judge of Pabna and Bogra on appeal decided the second of these two points in favour of the decree-holder. On the first point however he came to the conclusion that the Court which had tried the rent suit had no jurisdiction to make a decree for rent in respect of the land situated in the district of Pabna, and that the decree in so far as the Pabna property was concerned was void and there could not be any execution proceedings in respect of it. From that decision the decree-holder has appealed. The respondents in the appeal have filed cross-objections asserting their contention as regards Section 168A, Ben. Ten. Act, which I have already mentioned.

2. With regard to the first of the two points namely that the decree is a nullity and void in so far as it is a decree for rent due in respect of land in the district of Pabna, the contention is based upon the provisions of Section 144, Ben. Ten. Act, which provides that no suit between a land lord and a tenant as such shall be instituted in any Court other than a Court within the local jurisdiction of which the lands of the tenure or holding, as the case may be, are wholly or partly situated. The circumstances in which the executing Court is entitled to refuse to execute a decree on the ground of its invalidity are very limited. In *Gora Chand Halder v. Prafulla Kumar* : AIR1925 Cal907 it has been laid down by a Full Bench of this Court that the executing Court can refuse to execute a decree of the trial Court on the ground that it is a nullity where want of jurisdiction of the trial Court is apparent; that is to say, where the decree presented for execution was made by a Court which 'apparently' had no jurisdiction, whether pecuniary or territorial or in respect of the judgment-debtor's person, to make the decree.

3. In *Amala Bala Dasi v. Sarat Kumari Dasi* which was decided by M.N. Mukerji and Guha JJ., and is reported in : AIR1932 Cal380 that case has been referred to and it has been laid down that the executing Court is competent to refuse to execute the decree only when on the face of the decree it appears that the Court which passed it had no jurisdiction and that the expression 'the decree' signifies the decree and the papers relevant for the purpose of understanding it. Within these limits, the executing Court is entitled to refuse to execute a decree on the

ground that it was made without jurisdiction. In the case before us it appears that in coming to the conclusion that he did the learned Judge has not confined himself to an enquiry within these limits at all but has based his conclusion on questions of fact and matters which he was not entitled to take into consideration. In our view, there is nothing in the decree itself or in the papers which must be referred to for the purpose of understanding it which justifies the decision which he has arrived at. The jurisdiction of the Court which passed the decree is only assailable if it can be shown by reference to the papers mentioned that the decree related to a tenure or holding where none of the land was within the jurisdiction of the Court which passed it or related to more tenures than one and the land comprised in one of the tenures was wholly outside the local limits of the Court's jurisdiction. It does not appear to us that either of these circumstances emerge from the material that may be referred to. In the circumstances, in our judgment, the decision of the learned Judge is wrong on this point.

4. With regard to the second question which has been argued, the contention has been that the attachment and sale which is now the subject-matter of the execution case in the Sorajganj Court is not an attachment and sale of the entire tenure or holding inasmuch as part of the land comprised in the tenure, if there was only one tenure, has already been sold at an execution: and it is urged that in view of the words contained in Section 168A, Ben. Ten. Act, an execution case where the entire tenure or holding is not sought to be attached and sold is barred by the section. In this connection, it has been pointed by Henderson J. in *Abdul Rasheed v. Srish Chandra Nandy* : AIR1944 Cal301 that the use of the word 'entire' in Section 168A shows the limits which are placed upon the right of the decree-holder and to hold that although the decree can be satisfied by the sale of a small portion of the holding, the decree-holder against his own wishes and in spite of the protest of the judgment-debtor is compelled to bring the whole tenure to sale, would be to the disadvantage of the tenant. Henderson J. upon that reasoning has held that the section does not require the decree-holder to sell the entire holding although the decree may be satisfied by the sale of a portion of it. With great respect we agree with the view expressed by Henderson J. If it is not necessary in the first instance to bring the entire holding to sale and if indeed Section 168A, Ben. Ten. Act, does not bar execution proceedings in which a part

only of the holding is brought to sale then it appears to us that there is nothing in the section which will prevent a decree-holder bringing the remaining part of the holding to sale in a later proceeding if that part which he has brought to sale in the first instance is not enough to satisfy his decree in full. In our view, the section is not a bar to the course which has been taken in this particular case.

5. The appeal therefore must be a. with costs throughout. The hearing fee in this Court is assessed at five gold mohurs. The miscellaneous case instituted by the judgment-debtor under Section 47 of the Code will be dismissed and the execution will proceed.

6. The cross-objection is dismissed.

Edgley, J.

7. I agree.

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