

## APPELLATE CIVIL.

Before B. B. Ghose and Cummie JJ.

GOPENDRA KRISHNA SAHA AND OTHERS.

1928

Feb. 27.

v.

MATI LAL AGARWALLA.\*

*Execution of Decree—Joint decree—Application for realisation of portion by some of the joint decree-holders, when maintainable—Civil Procedure Code (Act V of 1908) S. 47, O. XXI, r. 15.*

An application for execution by a joint decree-holder with regard to a certain portion of the decree giving up the rest, the other decree-holder being a party and standing by, is not illegal as contravening O. XXI, r. 15 of the Code of Civil Procedure. But there cannot be any subsequent execution for the balance of the same decree.

APPEAL from Order by the plaintiffs decree-holders.

The plaintiffs were joint decree-holders with a *proformâ* defendant. The plaintiffs only applied for execution of the decree. In their said application the plaintiffs stated that the amount of the decree was Rs. 1,000 and that they deducted one-half share of the *proformâ* defendant decree-holder and asked for their own share of Rs. 500 only. The Subordinate Judge dismissed the said application stating that from a perusal of the columns 7 and 10 of the execution application it appeared that execution was sought only in respect of the whole of the plaintiffs' share of the decree, totally ignoring the *proformâ* defendant's share of it, which was forbidden by O. XXI, r. 15 of the Code of Civil Procedure. One of the plaintiffs then died and the names of his sons and heirs were duly brought on the records. Thereafter the plaintiffs decree-holders appealed to the High Court against the aforesaid order of dismissal of the execution case.

*Babu Bansori Lal Sarkar* for the appellants. Although the decree is joint, the application for execution by some of the decree-holders for their share of the decree does not violate the provisions of Order XXI, r. 15 of the Code of Civil Procedure.

\* Appeal from Order, No. 390 of 1926, against the order of N. G. Mukherjee, Subordinate Judge of Pabna, dated Aug. 27, 1926.

The Court called upon the respondent's counsel to reply on the question whether some of the joint decree-holders could give up a portion of decretal amount as in the present case.

*Mr. Bishindra Nath Sarkar* (with him *Babu Kali Sankar Sarkar*) for the respondents. This is not a case of giving up by a joint decree-holder of a portion of the sum decreed. The appellants have applied for execution for the entire sum to which they alone are entitled. Such applications are bad as contravening the provision of Order XXI, r. 15 of the Code of Civil Procedure.

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GHOSE AND CAMMIADE JJ. The application for execution, out of which this appeal arises, was dismissed on the ground that it contravened Order XXI, rule 15, C. P. C. We do not see how it contravenes that rule. The decree was made in favour of the applicants and the *proforma* defendant in the original suit for a lump sum of Rs. 1,000. On a previous occasion, it was held by the Subordinate Judge that the application was barred by limitation. On appeal to this Court that judgment was set aside, and it was held that the application was not barred as it was a joint decree that was sought to be executed by the other decree-holders within the period of limitation. The matter was sent back for the decision of the other questions in dispute. This time the Subordinate Judge has held that the applicants have done what is forbidden by Order XXI, rule 15. Order XXI, rule 15 does not forbid anything to be done. It is rather an enabling rule. It enables one or more of the persons in whose favour a decree has been passed to apply for execution of the whole decree for the benefit of them all. Sub-rule (2) of rule 15 provides for safeguarding the interest of persons who have not joined in the application. In the present application the applicants asked in the 10th column for the entire decretal amount being realized by attachment and sale of the immoveable properties of the judgment-debtors. In the 7th column they stated that the total amount of the decree was Rs. 1,000. Out of this they deducted

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one-half share of the *proforma* defendant and asked for their own share of Rs. 500. It is hardly necessary to state that a judgment-debtor cannot be harassed by different applications for execution made by different decree-holders for their own shares of the decretal amount. But if some of the joint decree-holders apply for execution with regard to a certain portion of the decree, giving up the rest, making the joint decree-holders parties to the application who do not object to the application giving up the rest of the decree, we do not see how it can be said that the application is liable to be dismissed. If one decree-holder gives up a portion of his decree, the application for execution for the rest cannot be said to be illegal, and in the present case the circumstances amount to that. The present application cannot be held to be contrary of law. The judgment-debtors cannot, however, be harassed by any subsequent application for execution of the balance of the same decree either by the present applicants or by the *proforma* defendant who has been made a party to this execution proceeding.

The appeal, therefore, should be allowed and the execution shall proceed on the application made by the appellants, with costs to the appellants in both Courts. We assess the hearing fee at three gold mohurs.

A. K. D.

*Appeal allowed.*