

ORIGINAL CIVIL.

Before Panckridge J.

CHHATRA PAT SINGH

v.

KHARAJ RAM LACHHMI RAM.*

1936

Mar. 11.

Execution—Transmission of decrees—Condition for transmission not satisfied against a particular judgment-debtor—Execution if valid against him—Code of Civil Procedure (Act V of 1908), s. 39.

A decree-holder obtained a transfer of the decree to the High Court for execution under s. 39(1)(b) of the Code of Civil Procedure, 1908, on the ground that one of the judgment-debtors had no property within the local limits of the Court which passed the decree sufficient to satisfy such decree, and had property within the local limits of the original jurisdiction of the High Court.

Held that an application made to the High Court for execution of the decree against another judgment-debtor whose case was not covered by s. 39 (1) (b) should be refused.

APPLICATION.

The facts of the case and arguments of counsel appear sufficiently from the judgment.

Ganga Dhar Banerji for the applicant Surpat Singh Dugar.

S. C. Bose and *P. C. Basu* for the respondents, the heirs of Bijay Singh Dudhoria.

PANCKRIDGE J. This application is in the form of an appeal against the order of the learned Master dismissing the application of one Surpat Singh Dugar, for leave to execute an order for costs made by His Majesty in Council against certain minors as representatives of a deceased respondent in the Privy Council proceedings.

The learned Master has set out the facts in detail and has dealt very fully with the questions raised.

*Application in Execution Case, No. 79 of 1926.

The salient facts are as follows : one Chhatra Pat Singh Dugar, the father of the present applicant, made an unsuccessful attempt to have himself adjudicated an insolvent under the provisions of the Provincial Insolvency Act. Being aggrieved by the refusal of the Courts in India to adjudicate him, he appealed to His Majesty in Council, and on November 23, 1916, the appeal was allowed, Chhatra Pat was adjudicated an insolvent, and an order for costs was made against the respondents generally. Among them was a creditor of Chhatra Pat Singh, by name Raja Bijay Singh Dudhoria. A receiver was appointed of the insolvent's assets on August 2, 1917, by the District Judge of Murshidabad, exercising insolvency jurisdiction. The insolvent died on April 25, 1918. On February 17, 1921, the order of His Majesty in Council was sent to the Murshidabad Court. On November 6, 1922, the receiver in the insolvency proceedings resigned, and no other receiver was appointed to take his place. Meanwhile, there was a partition suit pending on the Original Side of the Court, to which the parties were the heirs of the deceased Chhatra Pat. In that partition suit there was a reference to arbitration, and, by an award of November 23, 1922, the present applicant was allotted the benefit of the Privy Council order for costs. I am told that with regard to the insolvency the position was that most of the creditors had been paid in full, but that the claim of one alleged creditor was still outstanding. The heirs of Chhatra Pat were contesting this claim, and had furnished security for its payment in case the claim was established.

In April, 1923, there was an application to which the present applicant was a party for execution of the order for costs against Raja Bijay Singh Dudhoria, but it was abandoned and dismissed for default on May 26, 1923.

On January 20, 1926, the present applicant made an application under s. 39 of the Code of Civil Procedure for transmission of the decree to this Court for

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execution. In accordance with the rules he presented a tabular statement, and in the column provided for stating the name of the person against whom execution of the decree was sought, he entered the name of Bhaga Bati Prasad, described as proprietor of Ram Swarup Surya Prasad of No. 7. Kalakar Street, Calcutta. In the column provided for setting out the mode of execution, the applicant stated that, as the moveable and immoveable properties of Bhaga Bati Prasad consisted of the premises No. 7, Kalakar Street, Calcutta, he asked that a certificate might be sent to the High Court, Calcutta. He also set out the death of Chhatra Pat, and stated that on the basis of the award he had become entitled to the benefit of the order for costs.

The order sheet of the Murshidabad Court states that the applicant has asked for issue of a certificate to the High Court for execution of the order for costs against creditor No. 33, Ram Swarup Surya Prasad, who was one of the principal respondents in the Privy Council appeal. It also states that the application alleges that the said creditor, Ram Swarup Surya Prasad, has property within the jurisdiction of the High Court.

The order sheet shows that the Court made an order for the issue of the certificate for which the applicant prayed. On November 26, 1928, a tabular statement was filed in this Court against Raja Bijay Singh Dudhoria, and directions were given for a notice to issue under O. XXI, r. 22. The proceedings have hung fire for a considerable time, in the course of which Raja Bijay Singh Dudhoria has died, and an order has been obtained for substitution of the present respondents as his representatives and for the appointment of a guardian-*ad-litem*. The Master finally disposed of the matter on February 18, 1936. A large number of objections were taken on behalf of the respondents, but I do not think it is necessary to deal with all of them.

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To my mind the most important question raised is that regarding the application and construction of s. 39. It will be noticed that in the application for transfer the name of the respondent Raja Bijay Singh Dudhoria was not mentioned, and it is not suggested that if he had been the sole respondent in the Privy Council proceedings, there was any ground which would justify an order for transfer of the decree for execution to this Court.

Learned counsel for the applicant points out that under s. 39 the only power a Court has got is to send the decree for execution to another Court, and that there is nothing in the language of the section which would lead one to suppose that the Court has the power to qualify the mode of execution by which the decree is to be enforced by the Court to which it is transferred, or to limit the number of the judgment-debtors against whom execution proceedings may be taken in that Court. He quite rightly says that if the legislature had thought it right to impose any limitation of the nature suggested, it could have made its intention clear. From the language of the order for transfer as also from the materials on which the order was based it is clear that the grounds for the order were those set out in sub-s. (1) (b). It cannot be suggested that sub-s. (1) (d) has any application to the facts of this case, for the Court was not asked to record, nor did it record, any reasons in writing why the decree should be executed by another Court.

Various authorities have been referred to in support of the proposition that the Court has no power to make a limited order for transfer. In my opinion, however, the question depends not upon the language of this particular order, but upon the language of the section.

Having regard to the scheme of the section, I have come to the conclusion that where the condition justifying transfer is that set out in sub-s. (1) (b), the intention of the section is that execution

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should be limited to execution against the judgment-debtor who satisfies that condition. To hold that a judgment-creditor may obtain an order for transfer on the ground that one judgment-debtor has no property within the local limits of the Court which passed the decree and has property within the local jurisdiction of another Court, and may then execute the decree through such other Court not against that judgment-debtor but against another judgment-debtor, who does not fulfil that condition, seems to me so absurd that the section must be given the limited construction which I indicated.

I decide, therefore, that the learned Master was right in holding that this Court has no jurisdiction to execute the order against any judgment-debtor except Bhaga Bati Prasad. This is enough to dispose of the appeal.

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I do not propose to deal with the issue of limitation, which has been raised, and I hold that upon a true construction of s. 39 of the Civil Procedure Code and in the circumstances in which the order for transfer was made, this Court has no jurisdiction to give leave to execute the order for costs against any respondent except Bhaga Bati Prasad, and possibly any other respondent who satisfies the conditions of s. 39 (1) (b).

This application is therefore dismissed with costs. Costs as of a motion.

Application refused.

G. K. D.