

*Before Mr. Justice Bennet, Mr. Justice Iqbal Ahmad
and Mr. Justice Allsop*

BHAGWATI SINGH (JUDGMENT-DEBTOR) *v.* KASHI
NARAIN (DECREE-HOLDER)*

1938
February, 21

*Civil Procedure Code, sections 51, 72; order XXI, rule 30—
Bundelkhand Alienation of Land Act (Local Act II of 1903)
section 16—Execution sale of a particular land prohibited
by law—Whether a lease of the land can be granted in exe-
cution—Powers of court in enforcing execution.*

A simple money decree was sought to be executed against certain land the sale of which in execution of any decree was prohibited by section 16 of the Bundelkhand Alienation of Land Act, 1903, and the prayer was that a lease of the land should be granted to the decree-holder for a period of 20 years:

Held that the civil court had no power, in execution of the decree, to grant a lease of the property. Neither section 51 nor section 72 of the Civil Procedure Code gave such power.

Section 51 does not mention the granting of a lease as one of the modes of execution. A power to grant a lease cannot be deemed to be included in the power to sell which is expressly given in the section; nor can it be regarded as covered by the words, "in such other manner", in clause (e) of the section, inasmuch as the provisions of the section are subject to the conditions and limitations prescribed by the rules, and the existing rule relating to the methods of execution of simple money decrees, namely order XXI, rule 30, does not mention the granting of a lease as one of such methods.

Section 72 contemplates a case where the court has ordered the sale of land, and cannot therefore apply where the land is not saleable in execution and no sale has been ordered. Further, section 72 cannot apply where the Local Government has made a notification under section 68 touching the area in which the land in question is situate.

Mr. B. Malik, for the appellant.

Messrs. Shiva Prasad Sinha and S. N. Seth, for the respondent.

BENNETT, J.:—These are two execution second appeals which have been referred to a Full Bench for

*Second Appeal No. 1195 of 1935, from a decree of Hari Shankar, Civil Judge of Etawah, dated the 13th of May, 1935, reversing a decree of Ambika Prasad Srivastava, Munsif of Etawah, dated the 23rd of February, 1933.

decision. In Execution Second Appeal No. 1195 of 1935 Kashi Narain had obtained a simple money decree against the assets of Dirgpal Singh in the hands of his three brothers and his adopted son. One of these brothers was the appellant Bhagwati Singh and another was the appellant Sultan Singh. Hirday Narain had obtained a simple money decree against Sultan Singh in Execution Second Appeal No. 1196 of 1935. The lower appellate court has found that the family was separate. The application for execution in each case was that a lease should be granted to the decree-holder for a period of 20 years so that the decretal amount should be realised. The property had been attached before judgment. The property in question consisted of zamindari shares in villages in the trans-Jumna tract of Etawah district, and under section 16 of the Bundelkhand Alienation of Land Act of 1903, which applied to this area, "No land belonging to a member of an agricultural tribe shall be sold in execution of any decree or order of any civil or revenue court made after the commencement of this Act." The objection was taken by the judgment-debtors that the property should not be leased and the first court allowed the objection but the lower appellate court allowed the appeal of the decree-holder and dismissed the objection with costs. The lower appellate court has held that the civil court can grant the lease for 20 years to the decree-holder.

Learned counsel for the respondent, in arguing to uphold the order of the lower appellate court, based his case on section 51 of the Civil Procedure Code and also on section 72. Section 51 states as follows: "Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree-holder, order execution of the decree (e) in such other manner as the nature of the relief granted may require." The argument was that these words, "in such other manner", are perfectly general and that although leases are not enumerated in the

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clauses (a) to (d), a lease being a transfer to a less extent than a sale may be a remedy allowed by the words "in such other manner". The argument was supported by a Full Bench ruling of the Lahore High Court in *Sardarni Datar Kaur v. Ram Rattan* (1). This ruling was followed in *Majhli Dulaiya v. Munna Lal* (2) by a Bench of this Court in a case where sale was prohibited by section 16 of the Bundelkhand Land Alienation Act. The reasoning of the Court was that as the owner himself could have granted a lease in accordance with the terms of section 11 of the Bundelkhand Land Alienation Act therefore there was no reason why the execution court could not do what the owner could do. This principle does not seem to be correct. It is open to an owner to destroy his property but such a course is not open to an execution court. I consider that an execution court is bound by the methods laid down in section 51 of the Civil Procedure Code and those methods are subject to such conditions and limitations as may be prescribed, i.e., conditions or limitations prescribed by the rules under the Code and by the Code itself. Now in regard to the power to lease, such a power is given in the third schedule to the Collector and in section 72 to the Collector, but in both those cases the power is exercised by the Collector and the condition to the effect that it should be exercised by the Collector will prevent such a power being exercised by the civil court under section 51(e). The view that section 51 does not authorise a civil court to grant a lease has been held in *Basore Singh v. Sant Kumar* (3), by a Bench of this Court. In my view the meaning of section 51(e) is as follows. The words are "in such other manner as the nature of the relief granted may require". Now the "relief granted" is the relief granted in the decree. A decree may be for rendition of accounts or for partition or for restitution of conjugal rights. In each of those cases there

(1) (1920) I.L.R. 1 Lah. 192.

(2) [1932] A.L.J. 562.

(3) [1937] A.L.J. 801.

will be a particular method of execution which is required, for example in the case of partition there will be appointment of an amin to form lots for dividing the property. I do not think that sub-section (e) means anything else than a reference to the particular method of execution which a particular relief granted requires. In regard to the present decrees, which are simple money decrees, order XXI, rule 30 prescribes that such decrees may be executed by the detention in the civil prison of the judgment-debtor or by the attachment and sale of his property or by both. If it had been intended that a power to lease the property by the civil court should be given for execution of such decrees it would have been mentioned in this rule. But there is no mention of such a method. It may also be pointed out that in a case of land for which there is a prohibition of sale by a civil court in section 16 of the Bundelkhand Land Alienation Act, if it were held that under section 51 a civil court could grant a lease, then as that section prescribes no limitation for the period of a lease it would be open to the civil court to grant a lease for 99 years or 999 years or in perpetuity and by such a method of execution the provision against sale would be nullified.

Learned counsel also argued that a right to grant a lease may be based on section 72 of the Civil Procedure Code. That section, however, has certain difficulties in the way of any such interpretation. In the first place the section contemplates a case where the court has ordered the sale of land or a share in land and the Collector represents to the court that such sale would be objectionable. In the present case the sale of the land is prohibited by section 16 of the Bundelkhand Land Alienation Act and therefore the court has not passed any order for sale and cannot pass any order for sale. I consider therefore that as the section only applies in the case of an order for sale the section cannot be applied in the present case. The intention of the section evidently is that where a court has ordered sale then some clemency should be shown to the judgment-debtor on

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the representation of the Collector that satisfaction of the decree may be effected by a temporary alienation. But in the present case where there is a prohibition against sale it would not be interpreting the section in the interests of the judgment-debtor to hold that a temporary alienation could be made. A further difficulty is that the section contemplates that the court should authorise the Collector to make the temporary alienation. In the present case the order of the lower appellate court granting the application of the decree-holder is that the civil court should make the lease. This is clearly not contemplated by section 72. But the point that the property must be property which the civil court is empowered to sell and has ordered to be sold is the more important point. In section 68 also it may be noted that there must be an order for sale and when an order for sale has been passed by the civil court either by the decree itself or in execution of a decree then under the third schedule, paragraph 1 the Collector may direct a lease to be made instead of a sale. It may be noted that in the *U. P. Gazette* of 14th October, 1911, part I, page 1005, there was a Government notification of the 7th October, 1911, to the effect that all cases of execution of decree in which there had been an order for the sale of ancestral land were to be transferred to the Collector for execution under section 68. In the *U. P. Gazette* of 24th February, 1934, there was a notification No. 2052/I—A, dated the 16th February, 1934, publishing a draft notification and that notification was affirmed in the *U. P. Gazette* of 17th October, 1936, page 253, by notification of 8th October, 1936, No. 2271/I—93 which declared that all cases in which a civil court has ordered any agricultural land situated in the United Provinces to be sold shall be transferred to the Collector. These notifications were passed under section 70 of the Civil Procedure Code. It would therefore be clear that at the present period section 72 would not apply because there is a declaration in force under section 68.

Learned counsel for respondent referred to *Manohar Singh v. Riazuddin* (1). But that was a case dealing with an application for appointment of a receiver, and appointment of a receiver is one of the methods of execution laid down in section 51 of the Civil Procedure Code for a civil court. The present case is not one for the appointment of a receiver, so that question is not considered. Learned counsel for decree-holder has therefore failed to show that any case has been made out for the grant of a lease either under section 51 or under section 72 of the Civil Procedure Code.

Accordingly I would allow these two appeals and set aside the decrees of the lower appellate court and dismiss the applications of the decree-holders for execution with costs throughout.

IQBAL AHMAD, J.:—I agree.

ALLSOP, J.:—I agree with the order proposed. Section 51 of the Code of Civil Procedure describes the methods of execution which may be employed by a civil court but those methods in the terms of the section are subject to the conditions and limitations prescribed. The term "prescribed" is defined in the Code and it means prescribed by rules under the first schedule as modified under the sections which allow High Courts to make rules. It seems to me, therefore, that it is mainly to the rules to which we are to look for the methods of execution which may be employed. Under order XXI, rule 30, decrees for money may be executed by the arrest of the judgment-debtor or by the attachment and sale of his property. There is no mention in the rules of the execution of a decree by a civil court by means of granting a lease. It was suggested in the case of *Sardarni Datar Kaur v. Ram Rattan* (2) that the complete power of alienation implied in the right to sell property included the lesser power of alienating such property for a period by way of lease. With the greatest respect, I do not think that this proposition is

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(1) [1934] A.L.J. 770.

(2) (1920) I.L.R. 1 Lah. 192.

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true. A lease is not as if it were a lesser sale but a contract which gives rise to quite different rights and liabilities. The difficulties involved in the assumption that a civil court may grant a lease of a judgment-debtor's property were pointed out by a Bench of this Court in the case of *Basore Singh v. Sant Kumar* (1). I cannot agree that the power to lease is included in the power to sell property in section 51. The only other method of execution set forth in section 51 of the Act which might possibly be construed as including a power to grant a lease is the method given in clause (e) of that section which says that decrees may be executed "in such other manner as the nature of the relief granted may require". I think that this clause was intended, as my brother BENNET, J., has pointed out, to enable decrees of particular kinds to be executed, but it is not necessary in this case to decide definitely that it would be *ultra vires* of the court to make a rule allowing decrees under this clause to be executed by the granting of a lease. There is, however, at the present time no rule which authorises execution by this method and I hold therefore that a civil court cannot execute a decree by making a lease of the judgment-debtor's property. It is unnecessary to inquire whether a court may execute a decree by appointing a receiver. That particular relief was not claimed in the case before us. The provisions of section 72 of the Act apply only where the Local Government has not made a notification under section 68, which it has done for the area in which the property of the judgment-debtor lies. I agree that section 72 applies, in any case, only to property which can be sold in execution of a decree. The provisions of that section are intended to assist the judgment-debtor in proper circumstances from losing all rights in his property and they cannot apply to cases where the judgment-debtor is in no danger because his property cannot be sold.

(1) [1937] A.L.J. 801.