

APPELLATE CIVIL.

Before Mr. Justice Scott-Smith and Mr. Justice Fford.

ANWAR-UL-HAQ AND ANOTHER (PLAINTIFFS)

Appellants,

versus

NAZAR ABBAS AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 1144 of 1921.

Execution of Decree—passed against a dead person—whether a nullity and whether executing Court can entertain the objection.

Held, that a decree passed against a dead person is a nullity.

Balaram Pal v. Kanysha Maghi (1), *American Baptist, Foreign Mission Society v. Ammalunadhuni* (2), *Janardhan v. Ramchandra* (3), *Sripat Narain Rai v. Tirbeni Misra* (4), *Imam Uddin v. Sadarat Rai* (5), and *Bhai Nihal Singh v. Chait Singh* (6), followed.

Held also, that the objection can be taken in the executing Court.

Bhai Nihal Singh v. Chait Singh (6), followed.

Miscellaneous appeal from the order of Lieutenant-Colonel A. A. Irvine, District Judge, Ambala, dated the 16th February 1921, affirming that of Lala Manohar Lal, Munsif, 1st class, Ambala, dated the 16th October 1920, rejecting the plaintiffs' objection, to the decree, etc.

DURGA DAS, for Appellants.

BARKAT ALI, for Respondents.

The judgment of the Court was delivered by—

SCOTT-SMITH J.—The present appeal arises out of an order passed in execution proceedings. Anwar-ul-Haq and Ishtiaq Hussain, minors, sued for possession of a house as vendees and got a joint decree from the

(1) (1919) 53 I. C. 548.

(2) (1918) 48 I. C. 859.

(3) (1901) I. L. R. 26 Bom. 317.

(4) (1918) I. L. R. 40 All. 423.

(5) (1910) 7 All. L. J. 228.

(6) 31 P. R. 1886.

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Lower Courts. This decree was set aside by the High Court, and the suit was dismissed on the 2nd March 1920. Before that time the decree-holders had got possession of the house in execution proceedings on the 29th April 1919. Ishtiaq Hussain died on the 21st May 1919. The appeal was filed in the High Court on the 14th June 1919, Ishtiaq Hussain deceased being made a party. Prior to judgment in the High Court no application was made to bring the legal representatives of Ishtiaq Hussain on the record and the decree was passed in ignorance of the fact that he had died. Subsequently Anwar-ul-Haq applied to the High Court for review of judgment, but the application was dismissed, Chevis, Acting C. J., remarking that whether the decree of the High Court could be executed or not was a matter that had to be settled in execution proceedings. The original defendants having made an application in the execution Court for restoration of possession of the house, the Lower Courts have concurred in ordering the possession to be restored to them holding that they cannot go behind the decree of the High Court.

Anwar-ul-Haq and the representatives of Ishtiaq Hussain have filed a second appeal in this Court, and it is contended on their behalf that the decree of the High Court, setting aside the decree of the Lower Courts and dismissing the plaintiffs' suit, is a nullity because at the time when it was passed Ishtiaq Hussain was dead and his legal representatives had not been brought upon the record. Counsel referred *inter alia* to the cases of *Balaram Pal v. Kanysha Majhi* (1), *American Baptist Foreign Mission Society v. Annalanadhuni* (2), *Janardhan v. Ramchandra* (3),

(1) (1919) 53 I. C. 548.

(2) (1918) 48 I. C. 859.

(3) (1901) I. L. R. 26 Bom. 317;

Sripat Narain Rai v. Tribeni Misra (1), *Imam Uddin v. Sadarat Rai* (2), and *Bhai Nihal Singh v. Chait Singh* (3), wherein it was held that a decree passed against a dead person is a nullity. In *Bhai Nihal Singh v. Chait Singh* (3), it was held that no appeal lay from such a decree, and that the proper course for the representatives of the deceased person was to treat the decree passed against him as a nullity and to object in execution proceedings. No authority contrary to these has been cited by counsel for the respondents, and in accordance with them we hold that the decree passed against Ishtiaq Hussain by the High Court on the 2nd March 1920 is a nullity. The decree in favour of Anwar-ul-Haq and Ishtiaq Hussain was a joint decree and the appeal in the High Court could not proceed against Anwar-ul-Haq alone after the death of Ishtiaq Hussain without bringing the legal representatives of the latter on the record. The abatement of the appeal against Ishtiaq Hussain involves, therefore, the abatement of the appeal as a whole.

Under these circumstances the decree of the lower Courts in favour of Anwar-ul-Haq and Ishtiaq Hussain still stands and the executing Court cannot restore to the other party possession of the house which was given to them in execution of their decree.

We, therefore, accept the appeal and setting aside the order of the lower Courts reject the application of Nazar Abbas and others for restoration of possession of the house in dispute, and we direct that they should bear the appellants' costs throughout.

A. N. C.

Appeal accepted.

(1) (1918) I. L. R. 40 All. 423.

(2) (1910) 7 All. L. J. 228.

(3) 31 P. R. 1886.