

APPELLATE CIVIL.

Before Abdul Qadir J.

NASIR-UD-DIN AND OTHERS (JUDGMENT-DEBTORS)

Appellants

versus

DOST MOHAMMAD AND OTHERS (DECREE-HOLDERS)

Respondents.

Civil Appeal No. 1186 of 1928.

Civil Procedure Code, Act V of 1908, Order XXI, rule 15—Execution application by joint decree-holders—omission to state the name of all persons interested in the decree—whether invalidates execution proceedings—Discretion of Court to give notice to other decree-holders.

Held, that the omission on the part of a decree-holder to state in his application for execution the names of all the persons who are interested in the decree, is not such a defect as would invalidate execution proceedings. It is in the discretion of the Court to give notice to the other decree-holders or to the judgment-debtors before making an order for execution, though it is not obligatory on the Court to issue such notice.

Held also, that it is not for the judgment-debtor to raise an objection that sufficient steps have not been taken to safeguard the interests of the other decree-holders when they themselves have not made any complaint.

Dharmadev Rai v. Jwala Prasad (1), and *Ghanaya Lal v. Madho Parshad* (2), followed.

Meik v. Midnapur Zemindari Co. (3), not followed.

Miscellaneous First Appeal from the order of Pandit Devi Dayal, Joshi, Senior Subordinate Judge, Lahore, dated the 3rd April, 1928, disallowing the objections of the judgment-debtors and ordering the execution to proceed.

KISHEN DAYAL, for Appellants.

J. N. AGGARWAL and ASA RAM, for Respondents.

ABDUL QADIR J.—On 9th March, 1915, a decree

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(1) 1930 A. I. R. (All.) 180, 190. (2) (1931) 32 P. L. R. 290.

(3) (1919) 53 I. C. 803.

for Rs. 19,000 with costs was passed by compromise in favour of Dost Mohammad and the five sons of his brother, Fateh Mohammad; but the decree was not to be executed for one year after the said date. Applications for execution of this decree were made from time to time and the last one was dated the 27th April, 1927. The judgment-debtors objected to the execution of the decree on the ground that the last application was not in accordance with law, as laid down in Order 21, rule 15, Civil Procedure Code, as it was made by Dost Mohammad and did not state that it was for the benefit of all the decree-holders and made no reference to the share of *Mussammât Janat Bibi*, widow of Fateh Mohammad. It was further objected that the application was barred by time, because the application made on the 17th June, 1925, which was relied on as a step-in-aid of execution to save the limitation of the application of the 27th April, 1927, was itself defective, inasmuch as it was on behalf of the firm Dost Mohammad-Fateh Mohammad and not on behalf of Dost Mohammad himself, to whom rights under the decree had been transferred in his individual capacity. The Court of the Subordinate Judge, first class, disallowed these objections and ordered the execution to proceed. The judgment-debtors preferred an appeal to this Court against the order of the Subordinate Judge and got the execution stayed pending the disposal of the appeal.

I have heard Mr. Kishen Dayal for the appellants and Mr. Jagan Nath, Aggarwal, for the respondent decree holder, and find that there is no substance in this appeal and it must fail.

Before discussing the value of the objections raised on behalf of the judgment-debtors, it may be

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mentioned that the suit between the parties in which the decree by compromise was given was by the firm of two brothers, known as Dost Mohammad-Fateh Mohammad. Fateh Mohammad died leaving five sons, Din Mohammad, Abdul Majid, Abdul Hamid, Abdul Aziz and Abdul Rashid, and a widow *Mussammat* Janat Bibi. When the decree was passed Dost Mohammad and the five sons of Fateh Mohammad were shown as decree-holders. *Mussammat* Jannat Bibi's name was not on the record at any stage of the case or in any application for the execution of the decree. One of the sons of Fateh Mohammad, namely, Abdul Rashid, died some time during the period between 1915 and 1923, and on the 22nd December, 1923 his four brothers assigned their interests in the decree to Dost Mohammad and this deed of assignment was registered on the 20th June, 1924. It was for this reason that when Dost Mohammad took out execution in 1925, he did so in his own name and again in 1927, when he filed the application under discussion he filed it in his own name.

The contention of the judgment-debtors is that, *qua* the share of Abdul Rashid, deceased, *Mussammat* Jannat Bibi had certain rights as his heir under the Mohammadan Law, and as she was not made a party to the application of 1927 and it was not stated therein that the application was for the benefit of all the decree-holders, including *Mussammat* Jannat Bibi, therefore the application must be thrown out. Reliance was placed on a judgment of the Patna High Court *A. J. Meik, Esquire v. Midnapur Zemindary Co.* (1), which held that an application for execution of a decree, which does not comply with the requirements of rule 15 of Order 21, Civil Procedure Code,

(1) (1919) 53 I. C. 803.

cannot be allowed to be amended. The view taken, however, by the learned Judges of the Patna High Court in the above decision, does not appear to place the correct interpretation on Order 21, rule 15, according to some later authorities.

Mr. Jagan Nath refers to *Dharmadev Rai v. Jwala Prasad and another* (1), and also to a Division Bench decision of this Court in *Ghanaya Lal v. Madho Parshad* (2). In the last case it is held that it is nowhere laid down that the omission on the part of a decree-holder to state in his application the names of all the persons, who are interested in the decree, is such a defect as would invalidate execution proceedings. The same authority also makes it clear that it is in the discretion of the Court to give notice to the other decree-holder or to the judgment-debtor before making an order for execution, though it is not obligatory on the Court to issue such notice, and that it is not for the judgment-debtor to raise an objection that sufficient steps have not been taken to safeguard the interests of the other decree-holders when they themselves have not made any complaint. This ruling appears to me to be fully applicable to the case before me. Here, even if we assume that *Mussammatt Jannat Bibi* had any share or right in the decree in question, she has not come forward to be impleaded as a party to it, nor has she alleged that her husband's brother in executing the decree is trying to execute her share or to deprive her of her share. The position, as already explained, is that Dost Mohammad was, in his own right, entitled to one-half of the decree. His other brother's share which, after the death of that brother, belonged apparently to his

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five sons, had been assigned on the death of one of them, *i.e.* Abdul Rashid, to Dost Mohammad. The question whether *Mussammât* Jannat Bibi was entitled to a share is a moot point, depending on the question whether the parties are governed by Mohammadan Law or custom. The trial court has discussed this question but I do not think it was justified in going into it at the instance of the judgment-debtors. In any case the fact that there was no reference to the share of *Mussammât* Jannat Bibi in the application of 1927, could not be a valid ground for the application not being allowed to proceed without *Mussammât* Jannat Bibi being made a party. I think the execution should proceed subject to this safeguard that, if on any question being raised by *Mussammât* Jannat Bibi, it is found by any competent Court that she was entitled to a share in the decree as one of the heirs of Abdul Rashid, deceased, then any payment made by the judgment-debtors to Dost Mohammad would absolve the judgment-debtors of any responsibility towards *Mussammât* Jannat Bibi, who would be entitled to take her share out of any money that Dost Mohammad may realise through this execution.

As to the second point, whether there was any defect in the application for execution made in 1925 and whether that defect was such as would not help in saving the limitation of the application of 1927, the issue, to my mind, is very simple. I have looked at the original application and I find that it is somewhat curiously worded. The applicant's name is given there as firm Dost Mohammad, *Walad* Pir Bakhsh. Now, it is obvious that there was never a firm called Dost Mohammad only. The firm, when

it existed, was Dost Mohammad-Fateh Mohammad. The word 'firm' used before the name of Dost Mohammad seems to be a mere surplusage and a mistake, inadvertently made, by the scribe. The very fact that the parentage of Dost Mohammad is mentioned shows that he meant to apply in his own individual capacity and not in the name of the firm. Therefore the defect pointed out by Mr. Kishen Dayal in that application really disappears and I need not discuss the point of law on which counsel on both sides spent a good deal of time, *i.e.* whether a defective application can be taken to be a step-in-aid of execution.

I hold that the application of the 17th June, 1925 was in order, and that therefore the application of 27th April, 1927 was within time.

I, therefore, dismiss this appeal with costs and allow the execution of the decree to proceed.

A. N. C.

Appeal dismissed.

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