

Tej Ram v. Amar Singh (J. V. Gupta, J.)

(36) After consideration of the circumstances of the case and the conduct of the parties, I am of the opinion that it was not a fit case wherein a receiver should have been appointed. Accordingly, I accept the revision petition and set aside the impugned orders, so far as those relate to the appointment of a receiver. No order as to costs.

(37) The parties are directed to appear in the trial Court on October 25, 1985. Records be sent back to the trial Court immediately. That Court is directed to dispose of the case as early as possible as it has already become quite old.

N.K.S.

Before : J. V. Gupta, J.

TEJ RAM,—Petitioner.

versus

AMAR SINGH,—Respondent.

Civil Revision No. 1245 of 1984.

October 15, 1985.

Code of Civil Procedure (V of 1908)—Section 145—Suit for possession of agricultural land decreed—Appeal by the judgment-debtor—Execution of the decree stayed on furnishing security of mesne profits—Appeal subsequently dismissed—Recovery of mesne profits—Persons standing sureties for the judgment-debtor—Whether liable for the amount for which they were sureties.

Held, that from a reading of Section 145 of the Code of Civil Procedure, 1908, it is quite evident that any person who has furnished a security or given a guarantee, decree against him may be executed in the same manner as provided for the execution of the decrees. Of course, the said persons will be liable to pay the amount for which they were the sureties. If the decree holder claims over and above that amount, then the same will be determined by the executing court and after determination, the amount over and above that, if any, will be recovered from the judgment-debtor. The security bond could be executed in the execution proceedings without recourse to a fresh suit.

(Para 2).

Petition under Section 115 C.P.C. and Article 227 of the Constitution of India for revision of the order of the Court of Shri P. P. Chhabra, Sub Judge 1st Class, Kurukshetra, dated the 8th day of February, 1984 dismissing the petition.

Suresh Amba, Advocate, for the Petitioner.

V. K. Jain, Advocate, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) The brief facts giving rise to this petition are that Tej Ram, petitioner got a decree for possession by way of pre-emption of agricultural land on 15th January, 1969. He deposited the pre-emption amount and sought for the possession of the suit land. The vendee filed an appeal and his dispossession was stayed on the condition that he was required to furnish the security in the sum of Rs. 5,000. The said security was duly furnished and the appeal was ultimately dismissed on 27th February, 1971. The vendee then preferred a second appeal in the High Court and there also he got a stay order against the execution of decree on furnishing the security towards the mesne profits for the period of the pendency of the second appeal in the sum of Rs. 10,000. Ultimately, the second appeal was dismissed in the High Court on 18th November, 1981. The judgment-debtor also approached the Supreme Court, but failed. The plaintiff got the possession of the suit land in execution of the decree. Then he filed an application for the recovery of an amount of Rs. 25,000 as mesne profits for the period for which he was not delivered the possession. This application was contested by the judgment-debtor. Incidentally the two sureties were not made parties to the said application. In the reply filed on behalf of the judgment-debtor, jurisdiction of the Court, *inter-alia* was also challenged. The executing court took the view that unless there is a specific decree for the specific amount passed by the trial Court, or unless there is an order to that effect, the executing court could not grant the application. Dissatisfied with the same, the decree holder filed this petition in this Court.

(2) The main question to be decided in this petition is as to whether the persons who stood surety for the judgment-debtor in the two courts i.e. in the lower Appellate Court as well as in this Court are liable to pay the amount for which they were sureties, or not. This matter stands concluded by the judgment of this

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Court in *Naurang Singh vs. Teja Singh and others* (1). In the recent judgment of Bombay High Court in *Board of Trustees of the Port of Mormugao vs. Chowgule and Company Pvt. Mormugao Harbour, Goa*, (2) as well, the same view has been affirmed. Apart from that, section 145 of the Code of Civil Procedure reads as under:—

“Where any person has furnished security or given a guarantee—

- (a) for the performance of any decree or any part thereof, or
- (b) for the restitution of any property taken in execution of a decree, or
- (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

the decree or order may be executed in the manner herein provided for the execution of decrees, namely:—

- (i) if he has rendered himself personally liable, against him to that extent;
- (ii) if he has furnished any property as security, by sale of such property to the extent of the security;
- (iii) if the case falls both under clauses (i) and (ii), then to the extent specified in those clauses,

and such person shall be deemed to be a party within the meaning of Section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.”

Reading the said provision it is quite evident that any person who has furnished a security or given a guarantee, decree against him may be executed in the same manner as provided for the execution of the decrees. Of course, the said persons will be liable to pay the amount for which they were the sureties. If the decree holder claims over and above that amount, then the same will be determined by the executing court and after determination, the amount

(1) 1976 P.L.R. 96.

(2) A.I.R. 1985 Bombay 174.

over and above that, if any, will be recovered from the judgment-debtor. No judgment taking the contrary view has been cited by the judgment-debtor. It is held in *Naurang Singh's case* (supra) that if the first appellate court on its inherent jurisdiction under section 151, C.P.C. demanded security for payment of mesne profits from the judgment-debtor when he had applied for stay of his dispossession in execution of the decree and the said security bond was executed by the surety, in pursuance thereof, then the security bond could be executed similarly in the execution proceedings without any recourse to a fresh suit.

(3) In these circumstances, this petition succeeds, the impugned order is set aside and the case is sent back to the executing court for proceeding with the execution application in accordance with law. Of course the decree holder will implead the sureties as party to the execution application in order to claim the amount from them. The parties have been directed to appear in the executing court on 8th November, 1985. Records of the case be sent back forthwith.

N.K.S.

Before S. P. Goyal and G. C. Mital, JJ.

COMMISSIONER OF INCOME TAX, AMRITSAR,—Applicant.

versus

MAYA RAM JAI LAL,—Respondent.

Income Tax Reference No. 33 of 1977.

October 18, 1985.

Income Tax Act (XLIII of 1961)—Section 43(5)—Assessee carrying on business of manufacturing and supplying goods to others—Sums of money paid to different parties as compensation for not fulfilling the contract to supply goods to them—No evidence of any dispute between the parties nor as to why the contract was not performed—Basis of calculation of the amounts also not available—Payments made by the Assessee—Whether come within the purview of 'speculative transaction'—Such amounts—Whether to be disallowed as speculative in nature.

Held, that while determining as to whether a transaction was speculative or not what is to be seen on the facts of a given case is as to whether the dispute itself has been settled between the parties or is it the contract that has been settled. If the dispute is settled between the parties then it is not a speculative transaction but if the contract is settled and under the settlement of the contract, damages are paid, it would be a speculative transaction. If there is no evidence whatsoever as to whether the other party ever raised any dispute or