

(1920) 10 AHC CK 0005
In the Allahabad High Court

Chaudhri Mahadeo Prasad

APPELLANT

Vs

Raja Dirgbijai Singh and Another

RESPONDENT

Date of Decision : 26-10-1920

Acts Referred:

Contract Act, 1872 — Section 72

Citation : AIR 1921 All 81(1) : 60 Ind. Cas. 881

Hon'ble Judges : Walsh, J;Piggott, J

Bench : Division Bench

Judgement

Piggott, J.—The facts out of which these two connected second appeals arise may conveniently be stated as follows: Raja Dirgbijai Singh, the plaintiff-respondent in this Court, employed one Lala Manna Lal as a contractor to build a house for him. It has been denied that, on a settlement of accounts, some money would be found due to Manni Lal from the Raja in consequence of the performance of this contract, but there was a very decided difference of opinion between the parties concerned as to the amount so due. In the meantime, Manni Lal seems to have got into financial difficulties. At any rate, we know that more than one decree was in execution against him and that he was not prepared to pay up even the small amounts involved in the two decrees which will be presently referred to. The holder of one of these decrees was Mahadeo Prasad, the appellant in Second Appeal No. 1399 of 1917. He took out execution and applied to the Execution Court, that of the Munsif of Allahabad, to attach for his benefit any debt which might be due to Munhi Lal from Raja Dirgbijai Singh. This attachment was made under the provisions of Order XXII, Rule 46, of the Civil Procedure Code, and, so far, the proceedings of the Execution Court were admittedly correct. The learned Munsif, however, went on to pass an order directing the Raja to pay into Court a sum of money, apparently Rs. 1,000, for the benefit of the decree-holder, Mahadeo Prasad. It is not denied now that, under the Code of Civil Procedure, the Munsif had no right to make any such order. The Raja presented a petition of objection on the 11th of February 1914 in which he put forward various reasons why the Execution Court should not require

him to pay in this money but in this petition he made the important admission that, although the accounts between himself and Munni Lal were still unsettled, he had, he doubt that a sum of, at any rate, Rs. 1,000, or thereabouts, would be found due from him to Munni Lal upon proper settlement. The learned Munsif, I acting on this admission, overruled all the objections preferred by the Raja and passed a positive order that the money should be paid into Court by a fixed date. This date was postponed from time to time and, in the month of July 1914, we find the a Raja petitioning the Court for two months" further time within which to make the required payment. Finally, in the month of January 1915, the Munsif passed an order that a house belonging to Raja Dirgbijai Singh would be attached and sold unless the required deposit of Rs. 1,000 were made. Here, attain, it is admitted that the Expound) Court was wrong, the learned Munsif not having power under any provision of the CPC to pass such an order. Under pressure of this order, the Rata finally paid into Court a sum of Rs. 975. This was accepted as sufficient and wan eventually divided between Mahadeo Prasad, the original attaching creditor, and one Sheikh Habibullah, the holder of another decree against Lala Munni Lal, who applied for rateable distribution. The present suit was originally brought by Raja Dirgbijai Singh against Mahadeo Prasad only; but Sheikh Habibullah was subsequently added as a defendant, and the claim was to recover from each of these defendants, with interest, the money which he had taken out of the Munsif"s Court from the deposit of Rs. 1995. The suit was resisted on various grounds and disposed of by the learned Subordinate Judge in a very brief and summary judgment. The Trial Court seems to have held that it was quite sufficient to give the plaintiff a cause of action that he had paid in the sum of Rs. 975 under pressure of an attachment order which the Execution Court ought not to have passed. In dealing with the merits of the case he discussed one point only, and that was in connection with a pit a taken by the defendants. It appears that Munni Lal made an assignment of whatever money might be due to him from the Raja to two persons, Bisheshar Das and Paras Ram, the latter of whom was his sister"s husband. These persons brought a suit against the Raja as assignees finding their claim to a sum of Rs. 1,000. In his written statement Raja Dirgbijai Singh distinctly pleaded that the sum of Rs. 4250 deposited by him in the Court of the Munsif of Allahabad was n good and valid discharge of his debt to Munni Lal potation, and that this payment should be taken into account in settling the amount, if any, due to the plaintiffs. As it happened, this suit was not cited but the Raja compromised with the plaintiffs for a sum of Rs. 4,250 and a consent-decree was fasted accordingly. In the suit of which the two appeals now before as arise, the defendants made it part of their case that, in settling the terms of his compromise, the Raja had in suit received credit for this sum of Rs. 975, so that he was no laser by reason of the deposit made, by him in the Execution Court. The learned Subordinate Judge held that it was not proved by convincing evidence that credit had been given for this item to the Raja in settling the terms of the compromise, and he seems to have accepted Raja Dirgbijai Singh"s statement to the effect that credit was not given him. Upon this finding, the suit was decreed against both defendants in proportion to their

liabilities as set forth in the amended plaint. Both defendants appealed to the District Judge. In the memorandum of appeal filed by Mahadeo Prasad the point is distinctly taken that the plaintiff had failed to show that he had suffered any loss or damage and, further, that he had admitted his liability as debtor to Lila Manni Lal, to the extent of at least Rs. 1,000, before he made the payment of Rs. 975 into the Execution Court. These pleas obviously go to the merits of the case connected with them was a further plea of a legal nature, to the effect that the deposit in the Execution Court was made under the provisions of Order XXI, Rule 46, of the Code of Civil Procedure, without any condition whatever, and that no suit would lie to recover any sum of money so paid. The learned District Judge disposed of the two appeals in a careful judgment, the greater part of which, however, is devoted to a discussion of the supposed legal difficulties in the way of the plaintiff's maintaining the suit. On the merits of the case he says exceedingly little, and what he does say is distinctly less favourable to the plaintiff than is the finding of the Trial Court. In dealing with the question of the compromise under which the Raja paid Rs. 4,250 to Bisheshar Das and Paras Ram as assignees of Munni Lal, the learned District Judge says that he is not prepared to find on the evidence before him, affirmatively, that this item was taken into account in settling the terms of the compromise. He does not say that the plaintiff had satisfied him, either by his own statement or by any other evidence on the record, that the item in question was not so taken into account. On the appeal of Habibullah the learned District Judge had to deal with one plea peculiar to this defendant. It was contended that, even, if any tort had been committed entitling the plaintiff to relief, the reason for the same lay wholly on the shoulders of Mahadeo Prasad, Habibullah having had nothing to do with obtaining from the Execution Court any of the orders the validity of which was impeached in the plaint, but having merely applied for rateable distribution in respect of a sum of Rs. 970 which was lying to the credit of the judgment debtor Lala Munni Lal in the Court of the Munsif of Allahabad. With regard to this plea the learned District Judge contented himself with saying that Habibullah had got hold of money of the Raja's, which the Raja was under no legal obligation to pay, and that for this reason alone the Raja was entitled to get it back from him. Mahadeo Prasad and Sheikh Habibullah have filed separate appeals in this Court but, except as regards the fact point above noticed, these appeals proceed upon common grounds. There has been a good deal of argument before us with regard to certain questions of law supposed to be raised by the pleadings. On behalf of the plaintiff respondent we have been referred to a number of cases, of which it is not worth while to mention that relied upon by the District Judge, the case of *Kanhaiya Lal v. National Bank of India* 18 Ind. Cas. 149 : 40 C. 598 : 17 C.W.N. 541 : (1913) M.W.N. 506 : 13 M.L.T. 406 : 11 A.L.J. 413 : 17 C.L.J. (sic) 78 : 18 Bom. L.R. 472 : 184 P.L.R. 1913 : 25 M.L.J. 104 : 40 I.A. 66 (P.C.). The principle involved in these rulings I understand to be this, that if a decree holder obtains an order for attachment of property belonging to a third person, representing the same is the property of his judgment debtor, if, is open to the third person so aggrieved to protect himself by paying into Court under protest the amount of

the decree and subsequently maintaining a suit to receive the case from the decree holder. It does not seem to me that this principle has any real application to the foot of the present case. Broadly speaking, my opinion regarding these two appeals is, that the Courts below have assumed in favour of the plaintiff that he is entitled to equitable relief and have then proceeded to hold that there is nothing in law to prevent him from obtaining that relief by means of a suit against the two decree-holders who divided between them the money deposited by him in the Execution Court. The real question, however, is whether the plaintiff, on whom the burden of proof lay, has made out any case for equitable relief. In argument before us, it has been sought to support the claim with reference to Rules 58 and 65 of Order XXI of the Code of Civil Procedure, and also with reference to the equitable principle embodied in Section 72 of the Indian Contract Act. I do not myself think that it would be possible, without violent straining of language, to bring this case within the provisions of Rule 58 above mentioned; but even if it were so, the only effect would be to give rise to an objection absolutely fatal to the plaintiff's suit. The order of the Execution Court which really prejudices the rights of Raja Dirgbijai Singh was the order of the 11th of February 1914, overruling his objection and directing him positively to deposit in Court a sum of Rs. 1,000 for the benefit of Mahadeo Prasad, decree-holder. If any cause of action did accrue to the Raja under the rules to which reference has been made, it accrued to him on that date, and the present suit having been filed on the 11th of February 1916, is well beyond limitation from the date of the said order. It is even beyond limitation if reference be made to the date of the attachment of Raja Dirgbijai Singh's house, having been brought a little over a year after the date of the said attachment. The plaintiff's suit can only succeed, if at all, with reference to the equitable principle embodied in Section 72 of Act No. IX of 1874 to which reference has already been made. That section lays down that a person to whom money has been paid by mistake or under compulsion must repay or return it. Obviously, the section implies that the money was not really due to the person to whom it was paid and this is made clear by the illustrations. The whole point in this case is, in my opinion, that Raja Dirgbijai Singh, when he made his deposit of Rs. 975 in the Court of the Munsif, did so under an admission that he was in fact indebted to Lala Munni Lal at least to this extent.

2. When this point was made clear in the Courts of argument in this Court, the learned Counsel for the plaintiffs respondents, who argued his client's case throughout with great keenness and ability, fell back upon a contention to which no reference whatever is to be found in either of the judgments of the Courts below. He called attention to the fact that from the documentary evidence on the record it would appear that the assignment made by Lala Munni Lal of the debt due to him by Raja Dirgbijai Singh, in favour of Bisheshwar Das and Paras Ram, had been made in the month of September 1913, that is to say, before the order of the Munsif of Allahabad directing him to pay money into his Court for the benefit of Mahadeo Prasad, and long before that payment was actually made. On

this we were asked to hold that, as a matter of fact, no debt was due from Raja Dirgbijai Singh to Munni Lal at the time when Mahadeo Prasad obtained his order of attachment and brought pressure to bear through the Court on Raja Dirgbijai Singh to pay this sum of Rs. 975 for his benefit. The only difficulty I have felt is, whether this contention ought to be allowed to prevail. It involves a very definite shifting of position on the part of Raja Dirgbijai Singh from that taken up by him in the Execution Court. It is quite true that, in one of his petitions of objection addressed to the Munsif of Allahabad, he mentions the fact that Bisheshar Das, as assignee of some part at any rate of the debt due to Munni Lal, was pressing him with notices to pay the same. He puts this forward as one of the reasons why the Court should not order him to make any deposit on amount of that debt. This plea is, in my opinion, obviously controlled and governed by the Raja's express admission that, upon a settlement of accounts, a sum of at least Rs. 1,000 would be found due from him to Munni Lal, and in view of what took place in the Execution Court, I very much doubt whether, in any event, Raja Dirgbijai Singh could have been allowed to maintain a suit for recovery of the money upon a plea wholly inconsistent with this admission. My principal point against him, however, is that there is no indication of such a plea in his plaint. He nowhere makes it a ground for relief that he was not indebted to Munni Lal at all at the time when he paid the sum of Rs. 975 into the Munsif's Court. He bases his claim to relief purely and simply on the ground upon which it has been decreed by the Courts below, namely, that he had paid the money under compulsion of a process of attachment issued against him by the Execution Court which was contrary to law and wholly outside the powers of such Court to issue. On the facts of the case as a whole, having regard to what is apparent from the record as to Munni Lal's circumstances, and taking into consideration the fact that the claim brought against Raja Dirgbijai Singh by Munni Lal's transferees was compromised for less than a one-third of its amount, I have formed a very poor opinion of the plaintiff's case on equitable grounds. I certainly do not think that he ought to be allowed to succeed in this Court upon a plea to which no reference is to be found in his plaint, or in either of the judgments of the Courts below. If the defendants, Mahadeo Prasad and Habibullah, had definitely been put on their guard by the pleadings that the plaintiff's case was, the Mahadeo Prasad had misled the Court upon a question of fact, when he alleged that there was a debt due from Raja Dirgbijai Singh to Lala Munni Lal and sought an attachment of the same for his benefit, obviously these defendants would have been entitled to ask the Court to go into the whole question of the alleged transfer of that debt by Munni Lal, and they would have been in no way bound by the fact that Raja Dirgbijai Singh had seen fit to deal with the transferees on the basis of there being a valid transfer in their favour. As the record stands, I think the defendants are clearly entitled to hold the Raja to the admission made by him in his pleading before the Execution Court, to the effect that there was a debt of at least Rs. 1,000 due from him to Munni Lal, and to no one else. If this view is correct, it follows beyond all question that the third clause of Rule 46 of Order XXI, of the Code of Civil Procedure came into operation and that the payment

made into Court by Raja Dirgbijai Singh discharged him from liability towards Manni Lal to the extent of Rs. 975, for effectively as if he had made the payment direct to Manni Lal and obtained a receipt from the latter. The Courts below seem to me to have wholly overlooked the effect of this provision. It operates quite independently of any question as to the circumstances under which the payment was made, or the motive which may have influenced Raja Dirgbijai Singh in making it if he really owed Rs. 975 to Munni Lal, and paid it into Court, and thereby obtained a valid discharge to this extent, he has no claim in equity to recover that money from Mahadeo Prasad or Habibullah, who got possession of it under the orders of a competent Court as money belonging to their judgment-debtor, Munni Lal, and lying to his credit in the Execution Court. I have said enough to dispose of these appeals and I do not think it necessary to discuss in detail the special plea taken by Habibullah; but I feel bound to say that I do not see what cause of action against Habibullah is disclosed by the plaint or made out by the evidence produced in the two Courts below. For these reasons, I would allow both these appeals, set aside the decrees of both the Courts below, and dismiss the plaintiffs suit with costs throughout, including in this Court-fees on the higher scale.

Walsh, J.

3. I entirely agree. Having regard to the way in which the case was fought, both parties treated Munni Lal and his transferees as being in substance the same person, and the transfer as making no difference to the real merits which had to be decided.

4. In my opinion, at the time when the compromise was entered into, the Raja could not have been ignorant of or have forgotten the sum of money which had been paid into Court, Either he intended to treat it as a good payment to Munni Lal or his transferers, or he intended to keep it up his sleeve and when the compromise was carried out, to bring a suit to get the money back. He must have known that Munni Lal regarded the money as having been paid pro tanto as a discharge of his debt to Mahadeo Prasad. In my opinion, the Raja could not in equity enter into the compromise with the intention of bringing a suit to recover this sum of money, without making it one of the terms of the compromise that the compromise was entered into without prejudice to his right to recover the Rs. 975. In other words, the compromise undoubtedly involved on the part of the creditors the payment of a sum of Rs. 4,975, and the Raja was perfectly well aware of that fact when he entered into the compromise. That being so, this action is an abuse of the process of the Court and, therefore, ought to be dismissed.

5. The order of the Court is that we allow both these appeals, set aside the decrees of both the Courts below and dismiss the plaintiffs' suit with costs throughout, including in this Court fees on the higher scale.