
(1937) 04 CAL CK 0002
In the Calcutta High Court

Durga Prosad Chamaria

APPELLANT

Vs

Secretary of State for India and Others

RESPONDENT

Date of Decision : 09-04-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2(2), Order 21 Rule 53(3)
Public Demands Recovery Act — Section 19(1)

Citation : 172 Ind. Cas. 560

Hon'ble Judges : R.C. Mitter, J; Nasim Ali, J

Bench : Division Bench

Judgement

Nasim Ali J.

1. On April 19, 1926, the appellant Durga Prosad Chamaria, obtained a decree against respondents Nos. 2 to 4 Radha Kissen Chamaria, Mati Lal Chamaria and Srimati Anar Dei Sethani in Title Suit No. 61 of 1923, in the Court of the Subordinate Judge at Howrah, for Rs. 8,61,000 with interest at a certain rate up to the date of realization. Respondents Nos. 2 to 4 made certain payments from time to time towards the satisfaction of this decree, but these payments did not satisfy the entire decree. On April 1, 1933, the Certificate Officer of Howrah attached this decree u/s 19, Clause 1. Public Demands Recovery Act, in execution of a certificate filed in Certificate Case No. 1 M of 1933/34 for realization of about Rs. 3,86,000 due as arrears of income tax to respondent No. 1, the Secretary of State for India in Council, from the appellant. On March 17, 1934, respondent No. 1 applied to the Subordinate Judge, Howrah, to whom notice of attachment was given, to realize the amount due under the attached decree by executing the attached decree against respondents Nos. 2 to 4. The appellant was also made a party to this application for execution. On receiving this application, the Subordinate Judge, on May 8, 1934, ordered notice to be issued on the appellant as well as respondents Nos. 2 to 4 to show cause why the execution proceedings should not be carried on. This notice was issued on July 7, 1934, and was served on the appellant as well as on respondents Nos. 2 to 4 on June 27, 1934. On June 21, 1934, respondents Nos. 2 to 4 filed an

application under Order XXI, Rule 2, Sub-rule 2, Civil Procedure Code, for recording an adjustment of the attached decree between them and respondent No. 1, and its full satisfaction on the basis of the said adjustment. This petition was registered as Miscellaneous No. 59 of 1931.

2. On June 27, 1934, in pursuance of the notice served on him on that day, the appellant filed an objection to the execution of the attached decree u/s 47, Civil Procedure Code, This objection was registered as Miscellaneous Case No. 67 of 1934. After several adjournments both these cases came up for hearing before the learned Subordinate Judge on January 26, 1935. On that day the learned Subordinate Judge framed certain issues after hearing the parties. On January 28, 1935, he allowed the petition of the judgment-debtors under Order XXI, Rule 2, Sub-rule 2 and recorded the adjustment and full satisfaction of the attached decree and dismissed the appellant's objection u/s 47, Civil Procedure Code. Hence these two appeals by the original decree-holder Durga Prosad Cuamaria.

3. M. A. No. 252 of 1935.--This appeal arises out of the petition of the objection filed by the appellant on June 27, 1931, u/s 47, Civil Procedure Code. The material objections are these : (a) That the Secretary of State for India in Council is not entitled to attach and execute the decree as the certificate in execution of which the decree had been attached had been cancelled; (b) That before attachment the appellant had assigned his right, title and interest in the decree to one Keshardeo Chamaria on certain terms, one of these terms being that he would get a refund of Rs. 1,00,000 from the assignee on the happening of certain events.

4. The learned Subordinate Judge has held that the appellant on his own admission had no locus standi to maintain this objection as by assignment his interest in the decree had come to an end and the contingencies under which he was entitled to get the refund had not yet arisen and the amount to be refunded to him by the assignee was not a charge on the decree. Mr. Banerjee, appearing on behalf of the appellant in the course of the hearing of this appeal, abandoned the objection that the certificate in execution of which the decree had been attached had been cancelled and that the Secretary of State for India in Council was not entitled to proceed with the execution. As regards the objection based on the alleged assignment of the decree to Keshardeo before attachment, he asked us to dispose of this appeal on the assumption that there had been no assignment. He ultimately did not press this appeal. This appeal is accordingly dismissed. There will be no order for costs in this appeal.

5. M. A. No. 251 of 1935.--This appeal arises out of the application of respondents Nos. 2 to 4 under Order XXI, Rule 2, Sub-rule 2, Civil Procedure Code. The case of these respondents, briefly stated, is as follows : The major portion of the decree under execution was paid off by them to the appellant before the attachment of the decree by the Secretary of State for India in Council. After having come to know that an execution case has been started by the attaching certificate holder for realization of about Rs. 3,60,000 from them,

they approached the Certificate Officer of Howrah and told him that their liability under the attached decree was much less than the amount for which execution had been taken out. The Certificate Officer thereupon made certain inquiries and agreed, on March 28, 1934, to take Rs. 1,60,000 in full satisfaction of the attached decree provided the amount was paid down immediately and received Rs. 1,60,000 from them on that very day in full satisfaction of the decree under execution. The Government Pleader of How-rah, on behalf of respondent No. 1, namely the Secretary of State for India in Council, admitted this adjustment between the Certificate Officer of Howrah and respondents Nos. 2 to 4 at the time of the hearing of this case before the learned Subordinate Judge. He also admitted that the Certificate Officer was the agent of the Secretary of State for India for the realization of the decretal amount.

6. The appellant, however, objected to the recording of this adjustment. His objections in substance are these : (a) that the amount recoverable under the attached decree is over Rs. 3,60,000 and the allegations of the judgment-debtors to the contrary are false; (b) that the adjustment alleged by the judgment-debtors with the attaching certificate holder and the payment in pursuance of this adjustment are collusive, (c) that the attaching certificate holder has no right to adjust the decree in the manner alleged by the judgment-debtor. The learned Subordinate Judge has overruled these objections and has recorded the adjustment on the following findings : (1) That the original decree-holder, namely the appellant had no subsisting interest in the attached decree at the date of the attachment on his own admission in his petition u/s 47 filed on June 1934, and has, therefore, no locus standi to object to the recording of the adjustment pleaded by respondents Nos. 2 to 4, (2) that respondent No. 1, namely the Secretary of State for India in Council, has adjusted the decree as alleged by the judgment-debtor and has accepted the sum of Rs. 1,60,000 in full satisfaction of the decree, (3) that the executing Court has no jurisdiction in the present proceedings to decide whether the adjustment of the attached decree was brought about by collusion between the attaching certificate holder, namely, respondent No. 1 and the judgment-debtors, namely respondents Nos. 2 to 4, (4) that the position of the attaching decree holder is exactly the same as that of the original decree-holder. Consequently respondent No. 1 was quite within his rights when he, through his agent, the Certificate Officer of Howrah, granted full satisfaction of the attached decree on receipt of Rs. 1,60,000. The finding of the learned Judge, namely that the appellant had no subsisting interest in the decree under execution at the date of the attachment, was assailed on behalf of the respondents. Their contention is that the appellant was the holder of the attached decree at the date of the attachment. The learned Counsel appearing on behalf of the appellant in course of the hearing of this appeal intimated to us that the appellant would proceed in this case on the assumption that he had subsisting interest in the decree at the date of the attachment.

7. This being the position taken by the parties at the time of the hearing of this appeal, I set aside this finding. The learned Subordinate Judge has also held that

the appellant has no locus standi to oppose the application of respondents Nos. 2 to 4, namely, the judgment-debtors of the attached decree, under Order XXI, Rule 2, as on his own admission he has parted with his interest in the decree. The position taken up by the parties in the course of the hearing of this appeal being that the appellant was the holder of the attached decree at the date of the adjustment he is the only person interested in the question whether the adjustment and satisfaction of the decree as pleaded by the judgment-debtors should be recorded or not. I, therefore, hold that the appellant has locus standi to object to the petition of the judgment-debtors for recording the adjustment and satisfaction of the decree alleged by them under Order XXI, Rule 2 of the Code. The finding of the learned Subordinate Judge namely, that respondent No. 1 accepted from respondents Nos. 2 to 4 the sum of Rs. 1,60,000 in full satisfaction of the attached decree, was not challenged before us by any of the parties to this appeal. This finding is, therefore, affirmed.

8. As regards the finding of the learned Judge, namely, that the executing Court has no jurisdiction in the present proceeding to decide whether the adjustment of the decree was brought about by collusion between respondent No. 1 and the other respondents, the position is this : In the petition for execution filed on behalf of the Secretary of State in the Court of the Subordinate Judge on March 17, 1934, the decretal amount is mentioned as Rs. 3,32,373-100 including interest up to March 31, 1933. Interest at 61/4 per cent. up to March 16, 1934. The judgment-debtors' case is that their liability under the decree was not as stated in this petition inasmuch as there was an agreement between them and the appellant which) if given effect to, would reduce their liability to about Rs. 1,60,000. Their case further is that when they came to know of the petition for execution filed by the Secretary of State, they raised a dispute about the amount of their liability under the decree and the Certificate Officer thereupon, after making certain inquiries, received Rs. 1,60,000 in full satisfaction of the decree. It was, however, admitted by the learned Advocate appearing on behalf of the judgment debtors that the agreement which would reduce their liability to Rs. 1,60,000 was not certified under the provisions of Order XXI, Rule 2, within the period prescribed by law. The amount recoverable under the attached decree by execution must, therefore, be taken as stated in the petition for execution filed by the attaching certificate holder for the purposes of this execution. The position, therefore, is that although the amount recoverable under the attached decree was about Rs. 3,60,000 (Rs. 32,000 with interest at the rate mentioned in the decree on the date of the adjustment would come up to that figure), the Secretary of State for India in Council released the judgment-debtors from their liability under the decree by accepting Rs. 1,60,000 only.

9. The case of the appellant is that this adjustment and satisfaction of the decree is collusive and fraudulent. The answer of the respondents to this charge is that the attaching certificate-holder, namely, the Secretary of State for India in Council, by virtue of the attachment u/s 19, Public Demands Recovery Act, acquired all the rights of the appellant to adjust and grant satisfaction of the

attached decree inasmuch as the amount due on the decree under execution was less than the amount due under the certificate in execution of which the decree was attached, and consequently the question of collusion and fraud in the matter of the adjustment and discharge of the decree is wholly irrelevant for the purposes of the present inquiry. It is conceded on behalf of the respondents that if the attaching certificate-holder was not competent to adjust and give discharge of the attached decree, the adjustment pleaded by the judgment-debtors cannot be recorded under Order XXI, Rule 2 of the Code. If the attaching certificate-holder was within his rights to adjust the decree as alleged by the respondents and in exercise of that right, the judgment debtors have been released from their liability under the decree, the adjustment or discharge of the decree cannot be said to be collusive. The real question for determination, therefore, is whether the attaching certificate-holder had this right under the law at the date of the adjustment.

10. The opinion of the learned Judge on this point is that the position of the attaching decree-holder is exactly the same as that of the original decree-holder for all purposes and the adjustment of the attached decree to the satisfaction of the attaching decree-holder is adjustment to the satisfaction of the decree-holder within the meaning of Order XXI, Rule 2 of the Code.

11. The word "decree-holder" means any person in whose favour a decree has been passed : see Section 2, Clause 3, Civil Procedure Code, 1908. The attaching certificate-holder is not the person in whose favour the attached decree was passed.

12. It is, however, contended on behalf of the judgment-debtors that Order XXI, Rule 2, must be read along with Section 146 of the Code and the combined effect of these two provisions in the Code is to make a person claiming under the decree-holder a "decree-holder" within the meaning of Order XXI, Rule 2. Section 146 is in these terms:

Save as otherwise provided by this Code or by any law for the time being in force where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made by or against any person claiming under him.

13. There was no provision in the Code of 1882 corresponding to this section. There was some conflict of judicial opinion on the question whether in absence of an express reference to legal representative in the rule relating to proceedings for setting aside ex parte decrees, the legal representative of a defendant against whom an ex parte decree has been passed could take proceedings for setting aside an ex parte decree. Section 146 was enacted to meet such cases and cases similar to them and to set the conflict at rest. By operation of this section, a person claiming under a decree-holder may certify adjustment in the same manner as the decree-holder under whom he claims. It also authorizes the judgment-debtor to take proceedings for recording adjustment against a person

claiming under the decree-holder as he could do against the decree-holder. But before proceedings for certifying adjustment or recording adjustment can be initiated, the decree must be adjusted to the satisfaction of the decree-holder. In *Unao Commercial Bank Ltd. Vs. Mohar Gobind Rai and Another Sulaiman, C.J.* observed that by Section 146 of the Code the representative of a decree holder is entitled to take the same proceedings as the original decree-holder in whose favour the decree was passed. Apparently the learned Judge uses the word "representative" as a substitute for the words--"any person claiming under" in Section 146. But the right to take proceedings for certifying or recording adjustment comes into existence after the decree has been adjusted to the satisfaction of the decree-holder. This right is not, therefore, identical with the right to adjust the decree from which it flows.

14. Again Section 19, Clause 3, Public Demands Recovery Act, which corresponds to Order XXI, Rule 53, Clause 3, Civil Procedure Code, lays down that--the certificate-holder shall be deemed to be the representative of the holder [of the attached decree and to be entitled to execute the attached decree in any manner lawful for the holder thereof:

When a person is "deemed to -be" something, the only meaning possible is that where as he is, not in reality that something, the statute requires him to be treated as if he were : AIR 1930 54 (Privy Council) .

15. If the attaching decree-holder becomes the representative of the original decree-holder by operation of Section 146, there was no necessity for laying down again in Clause (3), Order XXI, Rule 53, that he was the representative of the original decree-holder. Section 146, therefore, does not make the attaching decree-holder a representative of the original decree-holder for the purpose of adjusting the attached decree. Section 19 (3), Public Demands Recovery Act, and Order XXI, Rule 53 (3) of the Code pay down that the attaching certificate-holder is to be deemed to be the representative of the original decree-holder. The word "representative" has not been defined in the Public Demands Recovery Act or in the Code. It means a person entitled to act in the place of another. Now what are the acts which an attaching decree-holder is entitled to do in place of the original decree-holder? The answer to this question is to be found in the words which follow, namely, "and to be entitled to execute such attached decree in any manner lawful to the holder thereof". The Legislature by adding these words defined the power of the attaching certificate-holder as the decree-holder. Sulaiman, C.J., in the Allahabad case thought that words of O.XXI, Rule 53 (3) were wide enough to give the attaching decree-holder power to take money out of Court and certify payment, though at the same time, the learned Judge pointed out that in actual practice this misconstruction of the rule would open, the door to fraud. The statute says that the attaching decree-holder shall be deemed to be the representative of the original decree-holder and to be entitled to execute the decree, that is, to enforce a decree by process of Court. In the Allahabad case the word "execute" did not receive proper consideration. If the

attaching decree-holder's right is confined to his right to realize the decretal amount by process of Court or in other words, if he is deemed to be the representative of the original decree-holder only for the purpose, of executing the decree, the mischief flowing from the construction put upon the rule in the Allahabad case can be avoided. If the attaching decree-holder is deemed to be the representative of the original decree-holder for all purposes, it would seriously prejudice the original decree-holder.

16. The admitted facts of this case illustrate how the original decree-holder would be prejudiced if the attaching decree-holder be held to be clothed with all the rights of the original decree -holder including his right to adjust the attached decree in any way he likes. The appellant's liability under the certificate in execution of which the decree has been attached amounts to Rs. 3,86,000. The amount recoverable under the attached decree is over Rs. 3,60,000, The attaching certificate-holder has received Rs. 1,60,000 in full satisfaction of the decree, and has credited only this amount towards the part satisfaction of the certificate debt : see Ex. 2 printed at p. 32 of the paper-book. Rules of procedure are made for furthering the ends of justice and not for defeating them. If the rights of the attaching decree-holder are enlarged in the manner suggested by the respondents, it would lead to injustice in many cases. That the attaching certificate-holder or the decree-holder does not acquire all the, rights of the original decree-holder and become a representative of the original decree-holder for all purposes, is clear from the fact that even after attachment the certificate-debtor or the original decree-holder is entitled to apply for execution of the attached decree; see Section 19, Clause (1), Sub-clause (ii), Public Demands Recovery Act, and Order XXI, Rule 53, Clause 1 (b) (it), Civil Procedure Code. Again Section 19, Clause 2, Public Demands Recovery Act, and Order XXI, Rule 53, Clause 2, Civil Procedure Code, define the duties of the executing Court when in pursuance of the attachment and by virtue of the power conferred on the attaching decree-holder by Clause 3, the attaching decree-holder makes an application to execute the attached decree. Clause 2 lays down that the executing Court, subject to the provisions of the CPC shall proceed to execute the attached decree, that is to realize the decretal amount by the process of the Court and shall apply the net proceeds of execution towards the satisfaction of the certificate. The provisions of Section 19, Public Demands Recovery Act and Order XXI, Rule 53, Civil Procedure Code, in my opinion, make the attaching certificate holder or the attaching decree-holder the representative of the original decree-holder only for a limited purpose, namely for executing the attached decree and for satisfying his own decree out of the proceeds of the execution. Further if the word "representative" in Clause 3, Section 19, Public Demands Recovery Act, and Order XXI, Rule 53, was intended to mean the representative of the original decree-holder, for all purposes that is the representative who is clothed with all the rights of the original decree-holder, the statute would have said that the attaching certificate-holder or decree-holder would be deemed to be the holder of the decree attached and not his representative only. The learned

Advocate for the respondent places much reliance upon the following observations of Bacon, V.C., in *Chatterton v. Watney & Co.* (1861) 16 Ch. D 378 : 50 LJCh. 227 at p. 382:

If the judgment-debtor has the means of paying the judgment debt by getting in debts which are due to him, he shall no longer have the power himself of getting in the debts but they shall be the property of the judgment-creditor to the extent of the amount for which he has recovered judgment.

17. But these observations simply show that the attaching decree-holder becomes the representative of the original decree-holder to the extent of the amount for which the attaching decree-holder has recovered judgment against the original decree-holder. These observations do not support the contention that after attachment the attaching decree holder becomes the representative of the original decree-holder for all purposes and is clothed with all the rights of the original decree-holder including his right to adjust the decree in any way he likes. It was also contended on behalf of the respondents that if sub.ss. 2 and 3? Section 19, Public Demands Recovery Act, be interpreted to mean that the attaching certificate-holder is the representative of the original decree-holder only for the limited purpose of carrying on the execution through Court, it would deprive the judgment-debtor of his right to pay off the judgment debt amicably out of Court and thereby to prevent execution. The obvious answer to this contention is that the judgment-debtor can deposit the decretal amount in Court under Order XXI, Rule 1 (a) of the Code and on such payment the decree will be satisfied. Again adjustment pleaded in this case is hit by Section 23, Contract Act, as its object clearly involves serious injury to the rights of the original decree-holder. For the aforesaid reasons I am of opinion that the Secretary of State for India in Council had no right to adjust the attached decree in the manner pleaded by the judgment-debtor and that this adjustment cannot be recorded under Order XXI, Rule 2, Civil Procedure Code.

18. The result, therefore, is that this appeal is allowed. The order of the learned Subordinate Judge recording the adjustment and satisfaction of the attached decree is set aside. The application of the judgment-debtor respondent under Order XXI, Rule 2, Sub-rule (2) of the Code for recording the adjustment and satisfaction of the decree is dismissed. The appellant will get his costs in the appeal from the respondents; hearing fee 15 gold mohurs.

R.C. Mitter, J.

19. I agree.