

(1899) 07 CAL CK 0013
In the Calcutta High Court

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APPELLANT

Vs

Maharaj Bahadoor Sing and Others

RESPONDENT

Date of Decision : 05-07-1899

Acts Referred:

Citation : (1899) ILR (Cal) 772

Hon'ble Judges : Stanley, J

Bench : Single Bench

Judgement

Stanley, J.—In this matter a summons was taken out by the plaintiff for an order for payment to him by the Accountant General of the balance which shall remain of the sum of Rs. 3,458-7-5 representing monies paid into Court by the Receiver appointed at the instance of the plaintiff over certain Immovable property of the defendant after payment of costs, or in the alternative that it be referred to the Registrar to report who are the persons if any entitled to participate in the fund besides the plaintiff.

2. The plaintiff obtained a decree against the defendant on the 30th of April, 1898 for the sum of Rs. 3,394-4-0 and costs, and on the 8th of August 1898 he obtained an order of attachment of, amongst other, certain property of the defendant in Khungraputty Street and in Cross Street in Calcutta.

3. By an order of the 26th of August 1898 made in this action Mr. Belchambers was appointed Receiver to collect from the tenants the rents of the property above referred to, and was directed, after payment thereof of charges and commission, to pay the balance of the amount so to be realized to the Comptroller-General of Accounts and the Secretary and Treasurer of the Bank of Bengal, with the privity of the Accountant-General to be by them placed to the credit of this suit, subject to the further order of this Court. The Receiver collected the rents, and on the 19th of April last he paid into Court the sum of Rs. 3,493-7-6.

4. No prohibitory order or attachment has been filed in the office of the

Accountant-General affecting this fund, and from the Sheriff's certificate, dated the 25th of May 1899, it appears that neither this nor any other property of the defendant is affected by any attachment before judgment.

5. A number of decree-holders other than the plaintiff in this action having obtained attachments against the Immovable properties of the defendant between the 24th of January 1895 and 23rd of May 1899, contend that u/s 295 of the CPC they are entitled to have the fund in Court rateably divided between them and the plaintiff.

6. It is clear that no creditor, who obtained an attachment order subsequent to the realization of the rents now represented by the moneys in Court, is entitled to participate, as it is only decree-holders who have applied to the Court for execution of their decrees prior to the realization who are comprehended in the section.

7. The question then is whether or not rents of property under attachment which have been realized by a Receiver appointed by one decree-holder are assets realized "by sale or otherwise" in execution of a decree within the meaning of Section 295 of the Code. This is a question of some difficulty and of considerable importance. On the part of the plaintiff it is contended that the words "or otherwise" refer to a realization under Sections 291, 305, or 322, the provisions of these sections being all modes of realizing assets from the property of the judgment-debtor otherwise "than by sale, and do not include a realization of assets by the appointment of a Receiver u/s 503. On the part of the other decree-holders it is argued that the words by "sale or otherwise" are comprehensive, and should be construed as meaning by sale or by other process of execution provided for by the Civil Procedure Code, and that the assets realized by the appointment of a Receiver are assets realized by a process of execution provided for by the Code.

8. The object of the Legislature in introducing Section 295 into the Code was manifestly to place all judgment-creditors on the same footing in the administration by the Court of their debtor's estate, provided that they had taken the precaution of invoking the aid of the Court by applying for execution of their decrees in any of the modes prescribed by the Code. Here the mode of execution in which the assistance of the Court was required by the creditors was by attachment of the debtor's property, but the plaintiff also sought execution of his decree by the appointment of a Receiver.

9. None of the cases to which I have been referred govern the present case.

10. In the case of *Purshotamdass Tribhovandass v. Surajbharthi Haribharthi* I.L.R.(1882) ., 6 Bom., 588, it was held that moneys paid by a judgment-debtor under arrest in satisfaction of the decree were not assets realized "by sale or otherwise" u/s 295 of the Code; that this section must be read as if the words from the property of the judgment-debtor "were inserted after the word realized." In this case, it will be observed, the debt was not realized by any of

the modes of execution prescribed by the Code.

11. That decision was approved of in the case of *Gopal Dai v. Chunni Lal* ILR (1885) All., 67. In that suit the plaintiff and the defendant held decrees against one Bishambarnath and took out execution of them, and the judgment-debtor's property was attached, but no sale took place. The judgment-debtor paid into Court the sum of Rs. 1,200 on account of the plaintiff's decree, and it was held that the plaintiff was entitled to the sum so paid into Court, and that it could not be regarded as "assets realised by sale or otherwise in execution of a decree" so as to be rateably divisible between the decree-holders u/s 295 of the Code, inasmuch as it could not be said that there was a realization from the property of the judgment-debtor. The payments in both these cases were made by the judgment-debtor voluntarily, though no doubt under the pressure of the decrees.

12. In the case of *Sew Bux Bogla v. Shib Chunder Sen* I.L.R (1886) C al., 225, the plaintiff had obtained a decree against the defendant for a sum of Rs. 1,397-11-0. In execution of this decree certain property of the judgment-debtor was attached on the 7th of January 1886. On the 31st of August 1885 one Bhugwan Doss obtained a decree against the same defendants for the sum of Rs. 1,241-14-3, and on the 8th of January 1886 applied for attachment of the defendant's property. On that date a warrant was issued, but the property was never actually attached. Some time between the 8th and 10th of January 1886 the defendants filed their petition of insolvency, and the usual vesting order was made. The Official Assignee then paid into Court the amount of the decree obtained by Sew Bux, and the property was released from attachment. In an application of Bhugwan Doss to the Court u/s 295 of the Code for a share of the money so paid into Court, it was held by Trevelyan, J., that the applicant was not entitled to participate in it, inasmuch as Section 295 only provided for the case where by the process of the Court in execution of a decree property has become available for distribution amongst the judgment-creditors. The learned Judge expressed his opinion that the words "by sale or otherwise" meant by sale or by other process of execution provided for in the Civil Procedure Code. This decision was followed by Sale, J., in the case of *Prosonnomoyi Dassi v. Sreenauth Roy* (1894) ILR Cal., 809.

13. I concur in this view. I see no good reason for limiting the meaning of the words so as to exclude from their operation any process of execution which is available to a judgment-creditor under the provisions of the Code. The Legislature in my opinion intended by the language of the section to secure for all judgment-creditors who had invoked the aid of the Court in the manner pointed out by the section a rateable participation in all assets realized by any process of execution.

14. It remains then to consider whether the appointment by the Court of a Receiver is a process of execution. Section 503 of the Code provides that "whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, moveable or

immoveable, the subject of a suit or under attachment, the Court may appoint a Receiver." The appointment of a Receiver by the Court at the instance of a judgment-creditor is equitable execution--see the judgment of Cotton, L.J., in *Anglo-Italian Bank v. Davies* IL.R(1878) 9 Ch. D., 275 It is a process of execution which is enforced by the Court at the instance of a judgment-creditor. Unlike the cases above referred to, where the moneys were paid into Court voluntarily by the judgment-debtor and by the Official Assignee, respectively, the moneys recovered in this suit have been realized out of the estate of the judgment-debtor in invitum and by the aid of the Court. This being so, I fail to see any reason for limiting the application of the principle of rateable distribution adopted in Section 295 in the way in which the plaintiff submits that it should be limited. My decision no doubt will deprive the plaintiff to a large extent of the immediate fruits of his superior diligence, but it is, I believe, consonant with the spirit and intention of the framers of the Code.

15. I shall therefore refer the matter to the Registrar under the alternative relief asked by the summons. The costs of all parties other than the defendants of this application to be paid out of the balance of the fund in Court before distribution after satisfying the costs of realization, including the plaintiff's costs of this application.