
(1912) 08 BOM CK 0019
In the Bombay High Court

Jetha Bhima and Co.

APPELLANT

Vs

Lady Janbai

RESPONDENT

Date of Decision : 16-08-1912

Acts Referred:

Citation : 17 Ind. Cas. 625

Hon'ble Judges : Basil Scott, C.J;N.G. Chandavarkar, J

Bench : Division Bench

Judgement

1. The material facts are that Balkrishna, a judgment-creditor of Mahomed Mehdi, attached on the 21st of December 1895 the right, title and interest of the judgment-debtor in certain securities for money held by the Receiver in the suit for the administration of the estate of Tharia Topan, the father of the judgment-debtor. On the 6th of January 1896, the judgment-debtor assigned the whole of his right, title and interest in the estate of his father to his mother, the defendant in this suit. In the year 1898, the present plaintiffs brought Suit No. 566 against the judgment-debtor, Mahomed Mehdi and obtained a decree on the 16th of September 1898, In 1899, Mahomed Mehdi took the benefit of the Insolvent Act but after a time his petition was dismissed. A fresh petition was filed in February 1903 and he was again adjudged insolvent but has not yet obtained his final discharge. In 1904, the present plaintiffs levied an attachment upon the same property as had already been attached, viz., the right, title and interest of Mahomed Mehdi in the securities held by the Receiver in the administration suit relating to his father's estate. On the 15th of October 1907, the judgment debt owing to Balkrishna was satisfied and his attachment was raised. Subsequently Lady Janbai, the assignee of the judgment-debtor under the assignment of the 6th of January 1896, applied to the Judge in Chambers and got the present plaintiffs' attachment raised and it is in consequence of the order raising that attachment that this suit has been instituted.

2. The plaintiffs pray that it may be declared that the property described in the schedule to the plaint to the extent of the interest of Mahomed Mehdi Tharia

Topan at the date of the several attachments is liable to be attached and sold in execution of the plaintiffs' decree.

3. By reason of the law of limitation, the plaintiffs are unable to challenge the assignment in favour of Lady Janbai upon any ground except that it is void under the provisions of Section 276 of the CPC of 1882. For the purpose of this suit, therefore, the assignment must be considered to be a bona fide assignment of the property of the judgment-debtor to Lady Janbai made in January 1896.

4. Now, in that year, the plaintiffs were not attaching creditors, nor had they even filed a suit against Mahomed Mehdi. It is said, however, that the assignment was by virtue of the provisions of Section 276 of the old Code void against the judgment-creditor Balkrishna who had attached on the 21st of December 1895 and that the claim of the present plaintiffs was a claim enforceable under the attachment of Balkrishna, and, therefore, the assignment in favour of Lady Janbai is void against the present plaintiffs. Balkrishna's attachment has been got rid of under the provisions of Section 275 of the Code, the section immediately preceding Section 276, upon which the plaintiffs based their claim. Section 275 provides that if the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment. In accordance with the provisions of that section, the attachment of Balkrishna was withdrawn on the 15th of October 1907.

5. The question now is whether, although that attachment is non-existent, the plaintiffs' claim is a claim enforceable under it. The argument, advanced on behalf of the plaintiffs, is that u/s 295, a creditor who has applied to the Court for execution of a decree for money against the same judgment-debtor and has not obtained satisfaction thereof, shall be entitled to a rateable distribution, with the other judgment-creditors in the same position, of all the assets realised by sale or otherwise in execution of the decree; and it was held by Mr. Justice Telang, in *Sorabji Edulji Warden v. Govind Ramji* 16 B. 91 that claims for rateable distribution of assets u/s 295 are claims enforceable under an attachment within the meaning of Section 276. That decision has received the mark of Legislative approval since the introduction of the Code of 1908, because Section 64, which is to the same effect as Section 276 of the old Code, explains that for the purposes of this section claims enforceable under an attachment include claims for the rateable distribution of assets. u/s 295, the essential condition of enforcement of claims for rateable distribution was that there should be assets realised by sale or otherwise in execution of a decree. That was a condition which was satisfied in the case of *Sorabji Edulji Warden v. Govind Ramji* 16 B. 91 but it is not so in the present case. There are, in our opinion, no assets realised by sale or otherwise in execution of a decree which can be divided rateably amongst the creditors who have applied for the execution of their decrees, and, therefore, the plaintiffs are

not the possessors of a claim enforceable u/s 295 or as a consequence enforceable under the attachment within the meaning of Section 276. The assignment to Lady Janbai is, therefore, not void as against the plaintiffs.

6. We, therefore, agree with the lower Court in thinking that the plaintiffs' case fails and must be dismissed with costs. We affirm the decree of the lower Court and dismiss the appeal with costs.